



DEAN C. LOGAN
Registrar-Recorder/County Clerk



Los Angeles County Registrar-Recorder/County Clerk

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

33 December 8, 2020

CELIA ZAVALA
EXECUTIVE OFFICER

December 08, 2020

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**REQUEST APPROVAL OF SOLE SOURCE CONTRACT #20-001 WITH RUNBECK ELECTION SERVICES
(ALL DISTRICTS) (3 VOTES)**

**CIO RECOMMENDATION: APPROVE (X) APPROVE WITH MODIFICATION ()
DISAPPROVE ()**

SUBJECT

The Department of Registrar-Recorder/County Clerk (Department) requests approval to execute Sole Source Contract #20-001 with Runbeck Election Services, Inc. (Runbeck) to provide Voter Information Management System (DIMS or System) Software, interfaces, and related support and maintenance services.

IT IS RECOMMENDED THAT THE BOARD:

1. Delegate authority to the Registrar-Recorder/County Clerk (RR/CC), or designee, to execute a Sole Source Contract substantially similar to Attachment I effective for a period of two (2) years unless sooner extended or terminated in whole or in part, with two (2) one-year option terms, for an aggregate term of four (4) years. The contract sum over the contract term is \$3,149,151 which includes potential allocated pool dollars. The estimated cost breakdown is \$774,535 for Year 1; \$774,535 for Year 2; \$791,398 for Year 3; and \$808,683 for Year 4.
2. Delegate authority to the RR/CC, or designee, to negotiate and execute amendments to: (i) exercise option terms, (2) make changes to the Statement of Work as operationally necessary provided that County Counsel approval is obtained, and (3) to make any other necessary changes which do not materially alter any term or condition of the Contract.

3. Delegate authority to the RR/CC, or designee, to execute change orders for additional work for system enhancements and customizations with allocated pool dollars of no more than \$400,000 included as part of the maximum contract sum of \$3,149,151 provided that approval from Chief Information Office and County Counsel is obtained.
4. Delegate authority to the RR/CC, or designee, to execute changes to the maximum contract sum of \$3,149,151 including an increase of no more than ten percent (10%) total, or \$314,915, over the potential maximum contract sum provided that approval from Chief Executive Office and County Counsel approval is obtained.
5. Delegate authority to the RR/CC, or designee, to terminate the Contract as necessary provided that County Counsel approval is obtained.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On January 30, 2007, your Board adopted a five (5) year contract with three (3) one-year extension options with Data Information Management Systems (DIMS), a wholly owned subsidiary, at the time, of Diebold Election Systems, Inc. for continued system licensing, maintenance and support services of the Department's election Voter Information Management System (VIMS) as well as any future system enhancements which were legally mandated by the Help America Vote Act (HAVA) and/or State of California law, regulation, or statute.

DIMS later became part of ESSVR, LLC (ESSVR), an Election Systems & Software LLC subsidiary. On May 5, 2015, your Board approved Amendment No. 8 that extended the base term of the DIMS contract until May 9, 2018.

On October 30, 2018, your Board adopted a contract effective May 10, 2018 through June 30, 2019, with up to six (6) three-month optional renewals through December 31, 2020 to provide continued system license, maintenance services, and support of VIMS. On April 18, 2019, the Department amended the contract with ESSVR to exercise the optional renewals to extend the agreement through December 31, 2020.

Effective June 24, 2019, Runbeck and ESSVR entered into a contract whereby Runbeck acquired all of the assets of ESSVR's DIMS.net business operations in the State of California, including licensing of all versions of object code and associated source code of DIMS.net software currently licensed and deployed to county jurisdictions located within the State of California. On September 13, 2019, the Department subsequently amended the contract with ESSVR to formally consent to the assignment and contract as well as recognize the acquisition by Runbeck.

System license, maintenance and support services are required for the continued support of the Department's VIMS system as well as any future system enhancements which are legally mandated by HAVA and/or State of California law, regulation, or statute. Additionally, the new contract will provide an avenue for modifications that were covered in the Board Report presented in April 2020. The expiration of the current contract with Runbeck will be December 31, 2020. RR/CC will enter into a Sole Source contract with Runbeck to ensure continued service delivery of services while the Department releases and completes and releases a solicitation for a new replacement solution/system.

The solicitation process will include release of a Request for Proposal, evaluation of submissions,

and selection of the recommended contractor to the Board of Supervisors. Once approved by the BOS, time will be needed for a new system to be designed and developed for the Department and certified by the California Secretary of State.

Implementation of Strategic Plan Goals

This request supports the County Strategic Plan as follows:

Goal No. III, Technology/Innovation: Improve the use of technology so that Department personnel can work together efficiently to solve workplace challenges. The sole source Voter Registration System License and Support Services contract with Runbeck will provide the Department with software licenses as well as maintenance and support services to continue uninterrupted critical support of VIMS and the support of all Elections results.

FISCAL IMPACT/FINANCING

The estimated cost of the recommended contract including pool dollars is \$3,149,151. If the ten percent (10%) delegated authority amount is utilized, the total contract cost will increase by \$314,915 to \$3,464,066. Funding for FY 2020-21 services is included in the RR/CC's adopted budget. Funding for future fiscal years will be requested by the Department through the annual fiscal year budget process.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The RR/CC has determined that provisions of the County's Living Wage Program (County Code Chapter 2.201) and of the County's Low-Cost Labor Resource Program (Board Policy 5.030) do not apply to this contract.

The contract contains Board required provision including those pertaining to consideration of qualified County employees targeted for layoff, as well as qualified GAIN/GROW participants for employment openings, compliance with Jury Duty Ordinance, Safely Surrendered Baby Law, and Child Support Compliance Programs. In addition, Runbeck is required to notify the County when the contract term is within six (6) months from expiration and when it has reached seventy-five percent (75%) of the authorized Contract Sum.

The contract contains certain applicable information technology provisions to protect the County. The Department believes the language negotiated is commercially reasonable and does not impose an unacceptable risk or burden to the County.

CONTRACTING PROCESS

In accordance to Board Policy 5.100 (Policy), the Department sent the Board notification of intent on June 15, 2020 to enter into a Sole Source contract with Runbeck. Negotiations for continued VIMS Maintenance and Support Services proceeded after the four (4) week notification period. However, the notification was not heard at Operations Cluster.

The required Sole Source Checklist (Attachment II) identifies the Department's need for a Sole Source contract with Runbeck.

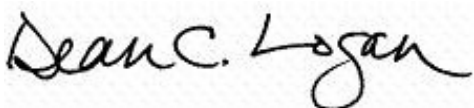
The Chief Executive Office (CEO) has reviewed and recommends approval of this Board letter. CEO

Risk Management Branch has reviewed and approved the insurance and indemnification provisions in the recommended sole source contract as to form. The Chief Information Office (CIO) recommends approval of this request. Because the new contract is for continued licensing, maintenance and support services, and no new technology is being implemented at this time, no formal CIO Analysis is required. However, the OCIO will review any change orders for technology enhancements that will be funded with Pool Dollars. Also, the County's Chief Information Security Office has validated that the Contract includes the latest approved Information Security and Privacy Requirements. County Counsel has reviewed this Board letter and approved as to form the attached Agreement.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Your Board's approval of the noted actions will allow for RR/CC to continue uninterrupted critical support of VIMS and the support of all Elections results.

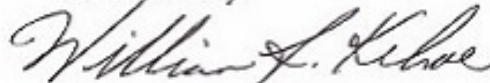
Respectfully submitted,



DEAN C. LOGAN

Registrar-Recorder/County Clerk

Reviewed by:



WILLIAM KEHOE

Chief Information Officer

DCL:DM:AN

VW:jw

Enclosures

c: Executive Office, Board of Supervisors
Chief Executive Office
County Counsel
Chief Information Office



CONTRACT #20-001

BY AND BETWEEN

COUNTY OF LOS ANGELES

AND

CONTRACTOR

FOR

**VOTER REGISTRATION SYSTEM
LICENSE AND SUPPORT SERVICES**

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- K Information Security Requirements

**CONTRACT BETWEEN
COUNTY OF LOS ANGELES
AND
RUNBECK ELECTION SERVICES, INC.
FOR
VOTER REGISTRATION SYSTEM
LICENSE AND SUPPORT SERVICES**

This Contract ("Contract") made and entered into this _____ day of _____, 20____ by and between the County of Los Angeles ("County") and Runbeck Election Services, Inc. ("Contractor"). Contractor is located at 2800 South 36th Street, Phoenix, Arizona 85034-7237.

RECITALS

WHEREAS, the County may contract with private businesses for Voter Registration System License and Support Services when certain requirements are met under Government Code Section 31000 and delegate that authority under Government Code Section 23005; and

WHEREAS, the Contractor is a private firm specializing in providing Voter Registration System License and Support Services; and

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for good and valuable consideration, the parties agree to the following:

1 APPLICABLE DOCUMENTS

- 1.1 Appendices A, B, C, D, E, F, G, H, I, J and K are attached to and form a part of this Contract. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, goods, service, or other work, or otherwise between the base Contract and the Appendices and Exhibits, or between Appendices and Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the terms and conditions of the Contract and then to the Appendices and Exhibits according to the following priority.

Standard Appendices:

- | | | |
|-----|--------------|--------------------------------|
| 1.1 | Appendix A - | Statement of Work |
| 1.2 | Appendix B - | Pricing Schedule |
| 1.3 | Appendix C - | Contractor's EEO Certification |

- 1.4 Appendix D - County's Administration
- 1.5 Appendix E - Contractor's Administration
- 1.6 Appendix F - Contractor Acknowledgement and Confidentiality Agreement
- 1.7 Appendix G - Jury Service Ordinance
- 1.8 Appendix H - Safely Surrendered Baby Law
- 1.9 Appendix I - Source Code Escrow Contract
- 1.10 Appendix J - Intentionally Omitted
- 1.11 Appendix K - Information Security Requirements

This Contract constitutes the complete and exclusive statement of understanding between the parties, and supersedes all previous contracts, written and oral, and all communications between the parties relating to the subject matter of this Contract. No change to this Contract shall be valid unless prepared pursuant to Paragraph 8.1 (Amendments) and signed by both parties.

2 DEFINITIONS

2.1 Standard Definitions:

The headings herein contained are for convenience and reference only and are not intended to define the scope of any provision thereof. The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used.

- 2.1.1 **Acceptance:** As used herein, the term shall mean County's written approval of any tasks, subtasks, deliverables, goods, services or other Work, including Acceptance Tests, provided by Contractor to County pursuant to this Contract.
- 2.1.2 **Agreement:** The agreement executed between County and Contractor. Included are all supplemental contracts amending or extending the service to be performed. The Contract sets forth the terms and conditions for the issuance and performance of all tasks, deliverables, services and other work. This word contract may be used interchangeably with the word "Contract".
- 2.1.3 **Amendment:** As used herein, the term shall have the meaning specified in Paragraph 8.1 (Amendments and Change Notices).

- 2.1.4 **Annual Fees:** As used herein, the term shall mean the annual fees to be paid by County to Contractor commencing upon first anniversary of the Effective Date and shall include License Renewal Fees and Software Support Fees, as specified in Appendix B (Pricing Schedule).
- 2.1.5 **Application Modifications:** As used herein, the term shall mean Software Enhancements, Updates and any Replacement Product provided by Contractor to County under this Contract. Once accepted and approved by County, Application Modifications shall become part of, and be deemed, System Software for the purpose of this Contract.
- 2.1.6 **Application Programming Interface or API:** A set of subroutine definitions, protocols, and tools for building application software. In general terms, it is a set of clearly defined methods of communication between various software components.
- 2.1.7 **Application Software:** As used herein, the term shall mean all core application and all Application Modifications accepted and approved by County, and related Documentation, provided by Contractor pursuant to this Contract. This includes Contractor's DIMS software (also referred to herein as "Contractor's Software") for purposes of license only, and not ownership.
- 2.1.8 **Base Term:** As used herein shall mean the same as set forth in Section 4 (Term of Contract).
- 2.1.9 **Board of Supervisors or Board:** The Board of Supervisors of the County of Los Angeles acting as governing body.
- 2.1.10 **Business Day(s):** As used herein, the term, whether singular or plural, shall mean Monday through Friday, excluding County observed holidays, unless stated otherwise.
- 2.1.11 **Business Hour(s):** As used herein, the term, whether singular or plural, shall mean 7:00 a.m. to 5:00 p.m. PT during Business Days.
- 2.1.12 **Chief Executive Office or CEO:** As used herein, the terms shall mean County's Chief Executive Office.
- 2.1.13 **Change Notice:** As used herein, the term shall have the meaning given to such term in Paragraph 8.1 (Amendments and Change Notices).
- 2.1.14 **Change Order:** As used herein, the term shall mean the terms of any Optional Work agreed to by County and Contractor applicable to the provision of Software Enhancements and Customizations by Contractor, as specified in Appendix A (Statement of Work).

- 2.1.15 **Component(s):** As used herein, the term "Component(s)" shall mean, individually and collectively, each and every component of the System, including System Software, System Environment and System Data, irrespective of whether provided by County or Contractor.
- 2.1.16 **Conditional Voter Registration or CVR:** Refers to the fourteen (14) day period prior to Election Day through and including Election Day, an individual can go to the office of their county elections official to conditionally register to vote and vote a provisional ballot.
- 2.1.17 **Confidential Information:** As used herein, the term shall mean any data or information, in any format, and includes sensitive financial information, any County Data and any other information otherwise deemed confidential by County or by applicable Federal, State or local law, as further specified in Paragraph 7.6 (Confidentiality).
- Contract:** The agreement executed between County and Contractor. Included are all supplemental contracts amending or extending the service to be performed. The Contract sets forth the terms and conditions for the issuance and performance of all tasks, deliverables, services and other work. This word contract may be used interchangeably with the word "Contract".
- 2.1.18 **Contract Deficiency Report:** This term as used herein shall have the same meaning as set forth in Section 4.3 (Contract Deficiency Report) of the Statement of Work.
- 2.1.19 **Contract Sum or Total Contract Sum:** As used herein, the term "Contract Sum" shall mean the total monetary amount payable by County to Contractor hereunder, as set forth in Paragraph 5.0 (Contract Sum). The Contract Sum shall not be adjusted for any costs or expenses whatsoever of Contractor, without written consent of County.
- 2.1.20 **Contractor:** The person or persons, sole proprietor, partnership, joint venture, corporation or other legal entity who has entered into a Contract with the County to perform or execute the work covered by this contract.
- 2.1.21 **Contractor Project Manager:** The dedicated Project Manager designated by the Contractor to administer the agreement operations under this Contract. Individual responsible for the overall day to day project – overseeing the deployment of people, systems and processes needed for the successful implementation of Contractor's solution for County elections.

- 2.1.22 **Contractor Key Personnel:** As used herein, the term shall have the meaning specified in Paragraph 7.1 (Contractor Administration).
- 2.1.23 **Core Application Software Upgrades:** As used herein, the term shall mean periodic updates, revisions, or enhancements to Core Application Software.
- 2.1.24 **County:** The County of Los Angeles in the State of California.
- 2.1.25 **County Data:** As used herein, the term shall mean all data and information provided or owned by County, whether stored on-line or off-line, which will be used by Contractor for providing Work under this Contract.
- 2.1.26 **County Hardware:** As used herein, the term shall mean all County owned computers and other equipment that will be used in conjunction with any Contractor provided hardware as part of the system environment for the provision of Work pursuant to this Contract.
- 2.1.27 **County Contract Project Monitor:** Person with responsibility to oversee the day to day activities of this contract. Responsibility for inspections of any and all tasks, deliverables, goods, services and other work provided by the contractor.
- 2.1.28 **County Key Personnel:** As used herein, the term shall have the meaning specified in Paragraph 6.1 (County's Administration).
- 2.1.29 **County's Project Administration:** As used herein, the term shall have the meaning specified in Paragraph 6.1 (County's Project Administration).
- 2.1.30 **County Project Director:** Person designated by County with authority for County on contractual or administrative matters relating to this contract that cannot be resolved by the County's Project Manager.
- 2.1.31 **County Project Manager:** Person designated by County's Project Director to manage the operations under this contract.
- 2.1.32 **Critical Election Period:** The election period is defined as E-30 through E+20 for Countywide elections.
- 2.1.33 **Customizations:** As used herein, the term Customizations shall mean Solution Modifications and Application Program Interfaces, and related Documentation, which Contractor may provide upon County's request therefor in the form of Optional Work in accordance with Appendix A (Statement of Work).
- 2.1.34 **Data Information Management System or DIMS:** Refers to the RR/CC's system that manages all voter registration information.

- 2.1.35 **Day(s):** Whether capitalized or not, shall mean calendar day(s), not business or working days, unless otherwise specified.
- 2.1.36 **Debarment:** This term as used herein shall mean the process that precludes an existing contractor and/or proposer from: submitting a response to a County solicitation, being awarded a Contract, and/or performing Work on a County Contract.
- 2.1.37 **Declared Vote-by-Mail Voter or DVBM:** If an election precinct has two hundred and fifty (250) or less registered voters on the eighty-eighth (88th) day prior to an election, that precinct may be declared a Vote-by-Mail precinct by the elections official due to unavailability of voting locations and poll workers in small precincts. All voters in such designated precincts will automatically be sent a VBM ballot for that election.
- 2.1.38 **Deficiency or Deficiencies:** As used herein, the term, whether singular or plural, shall mean and include any defect(s) in the development, implementation, materials and/or workmanship; error(s), omission(s) and/or deviation(s) from published and/or mutually agreed upon standards; deviation(s) from any of the requirements or any County approved Deliverables or Specifications under the Contract; and/or other problems which result in the system, or any system component, not performing in compliance with the provisions of this Contract, including, but not limited to, the Specifications, System Requirements and System Performance Requirements.
- 2.1.39 **Deficiency Credits:** As used herein, the term shall mean credits or any other form of discount to be applied to the applicable Maintenance Fees for Contractor's failure to timely correct Deficiencies, as specified in Exhibit 5 (System Maintenance), Section 5.1 (Deficiency Credits).
- 2.1.40 **Deliverable or Deliverables:** As used herein, the terms, whether singular or plural, shall mean items and/or services provided or to be provided by Contractor under this Contract, including numbered Deliverable(s) in Appendix A (Statement of Work).
- 2.1.41 **Department or Department of Registrar-Recorder/County Clerk:** Department and staff responsible for the update and file maintenance of voter registration records and the conduct of elections in County. <https://www.lavote.net/>. Headquarters is located at 12400 Imperial Highway, Norwalk, California 90650.
- 2.1.42 **Director:** As used herein, the term "Director" shall mean the Project director of this Contract.

- 2.1.43 **Disabling Device(s):** shall have the meaning specified in 4.1 (General Warranties).
- 2.1.44 **Disaster Recovery Plan:** Plan for how systems and processes would be put back in place in circumstances of massive loss. Example – loss of power or loss of data.
- 2.1.45 **Documentation:** As used herein, the term shall mean any and all written and electronic materials provided or made available by Contractor under this Contract, including, but not limited to, documentation relating to software specifications and functions, training course materials, Specifications including System Requirements, technical manuals, handbooks, flow charts, technical information, reference materials, user manuals, operating manuals, quick reference guides, FAQs, and all other instructions and reference materials relating to the capabilities, operation, installation and use of the system and/or applicable components.
- 2.1.46 **Downtime:** As used herein, the term shall mean shall have the meaning specified in Section 5.1 (Deficiency Credits). It is that period of time when the System or any System Component, due to any Deficiency, fails to function, and as a result, County is unable to utilize the system in accordance with the Specifications, including System Requirements and System Performance Requirements, and this Contract, as further specified in Exhibit 5 (System Maintenance).
- 2.1.47 **Due Date:** As used herein, the term shall mean the due date for the completion of any Deliverable in the Project Schedule or any Change Order.
- 2.1.48 **DXI:** DIMS.net eXternal Interface.
- 2.1.49 **E dates or E- or E+:** Refers to the number of days before the date of an election (E-) or the numbers of day after an election (E+).
- 2.1.50 **Effective Date:** As used herein shall mean the date identified in the Preamble to this Contract, which is the date as of which this Contract has been executed by an authorized representative of the Contractor and has been approved by the Board.
- 2.1.51 **Elections** (i.e., Federal, Statewide, and Local): A formal and organized process for electing a candidate.
- 2.1.52 **Election Period(s):** The election period is defined per election from the opening of the first Vote Center to the close of the last Vote Center.
- 2.1.53 **Election Plan:** A plan completed by the Contractor that accounts for each and every election task. As needed, the plan will be used as a management tool to ensure the

successful completion of all Tasks and Deliverables, according to mandated and time sensitive time frames.

- 2.1.54 **Election Tally System or ETS:** Refers to programmatically tallying election results for an election.
- 2.1.55 **Extension(s):** This term as used herein shall mean the same as set forth in Section 4 (Term of Contract).
- 2.1.56 **Federal Election:** Refers to the primary, general, or special election conducted to elect a President, Vice President, Member of the United States Senate or House of Representatives.
- 2.1.57 **Finalized Requirements:** A detailed documentation that describes the capabilities, features and functionalities of the deliverable/s, including the acceptance criteria approved by the County Project Director or County Project Manager or RR/CC.
- 2.1.58 **Fiscal Year:** The twelve (12) month period beginning July 1st and ending the following June 30th.
- 2.1.59 **Fixed Hourly Rate:** As used herein, the term shall mean the hourly rate, specified in Appendix B (Pricing Schedule), for Professional Services, including Consulting Services, Additional Training and Customizations, which Contractor may provide upon County's request therefor in the form of Optional Work in accordance with Appendix A (Statement of Work).
- 2.1.60 **General Election:** Occurs in November of even numbered years (i.e., 2020, 2022, 2024, etc.).
- 2.1.61 **Help Desk:** As used herein, the term shall mean Contractor's help desk for providing Support Services hereunder, as specified in Exhibit 5 (System Maintenance).
- 2.1.62 **Help Desk Status Report:** Refers to reports provided by Contractor containing the date problem was reported, the description, severity level, status, staff person assigned to resolve problem, and date problem resolved.
- 2.1.63 **Initial Term:** As used herein, the term shall have the meaning specified in Paragraph 4.1 (Contract Term).
- 2.1.64 **Interface(s):** As used herein, the term "Interfaces" shall mean the set of software mechanisms, consisting of Application Program Interfaces which may be provided by Contractor under this Contract, which allow the transfer of electronic data and/or software commands between computer systems, networks, applications or modules, and related Documentation.
- 2.1.65 **Issue Management Tracking Process:** Refers to the Contractor's tracking process where Departmental IT staff can

review the status and updates of the support requests made by RR/CC.

- 2.1.66 **License:** As used herein, the term "License" shall have the meaning specified in clause 10.2 (License) this Contract.
- 2.1.67 **License Fees:** As used herein, the term "License Fee(s)" shall mean the fees for the License to be paid by County to Contractor over the period of System Implementation and System Maintenance and Election Support services as specified in Appendix B (Pricing Schedule).
- 2.1.68 **License Renewal Fees:** As used herein, the term "License Renewal Fee(s)" shall mean the fees to be paid by County to Contractor for the renewal of the License commencing on the first anniversary of the Effective Date, as specified in Appendix B (Pricing Schedule).
- 2.1.69 **Local Election:** Refers to a municipal, county, or district election.
- 2.1.70 **Maintenance and Support Services:** As used herein shall mean the same as set forth in Exhibit 5 (System Maintenance).
- 2.1.71 **Maintenance Fees:** As used herein, the term shall mean the applicable fees to be paid by County to Contractor for System Maintenance pursuant to Appendix B (Pricing Schedule) and shall include any or all of the following: License Renewal Fees, Software Support Fees and/or System Support Fees.
- 2.1.72 **Maintenance Services:** As used herein, the term shall have the meaning specified in Exhibit 5 (System Maintenance). and shall comprise part of System Maintenance provided by Contractor under this Contract.
- 2.1.73 **Maximum Fixed Price:** As used herein, the term shall mean the maximum amount to be paid by County to Contractor for any Optional Work approved by County to be provided by Contractor in accordance with Appendix A (Statement of Work).
- 2.1.74 **Mass File:** A data set of all Permanent VBM voters who receive a mail ballot on a permanent basis. Also known as the Perm File.
- 2.1.75 **Mean Time to Resolution:** Time from notification of incident to resolution.
- 2.1.76 **Military or Overseas Voter:** Refers to a voter who is permanently or temporary residing out of the county for an election.
- 2.1.77 **National institute of Standards and Technology or NIST:** This term as used herein shall mean a non-regulatory Federal agency within the United States (U.S.) Department of

Commerce that works with industry to develop and apply technology, measurements, and standards and promotes U.S. innovation and industrial competitiveness.

- 2.1.78 **Non-Responsibility:** This term as used herein shall mean a finding by the County that a proposer is incapable of performing as a responsible County contractor, based on past performance history or other relevant documentation.
- 2.1.79 **Non-Responsive:** This term as used herein shall mean the failure of a proposer to comply with all solicitation requirements making the proposer ineligible for consideration in that specific proposal evaluation process.
- 2.1.80 **Option Term:** This term as used herein shall mean the same as set forth in Section 4 (Term of Contract).
- 2.1.81 **Optional Work:** As used herein, this term shall mean Software Enhancements and/or Professional Services, which may be provided by Contractor to County upon County's request and approval in accordance with Appendix A (Statement of Work).
- 2.1.82 **Party or Parties:** This term as used herein shall mean the same as set forth in the Recitals.
- 2.1.83 **Payment Schedule:** As used herein, the term shall mean prices for Deliverables, rates and other fees identified as Appendix B (Pricing Schedule) with all Schedules thereto.
- 2.1.84 **Permanent Vote-by-Mail Voter or PVBV:** Voters who have requested to receive a mail ballot for all elections in which they are eligible to vote.
- 2.1.85 **Personally, Identifiable Information or PII:** This term as used herein shall mean any information that identifies a person, including, but not limited to, name, address, email address, passwords, account numbers, social security numbers, credit card information, personal, financial, or healthcare information, personal preferences, demographic data, marketing data, credit data, or any other identification data. For the avoidance of doubt, Personally Identifiable Information shall include, but not be limited to, all "non-public personal information," as defined under the Gramm-Leach-Bliley Act (15 United States Code ("U.S.C.") §6801 et seq.
- 2.1.86 **Pool Dollars:** As used herein, the term "Pool Dollars" shall mean the maximum amount allocated under this Agreement for the provision by Contractor of Optional Work, including Software Enhancements and Professional Services approved by County in accordance with the terms of this Contract.
- 2.1.87 **Precinct:** This term as used herein shall mean a geographical area which contains 1,000 or fewer voters, established for

election administration functions. In California, a consolidated precinct is required to contain 1,000 or fewer poll voters. Regular precinct boundaries may change each election to "voting precinct" boundaries, depending on the jurisdictions holding elections and the resulting ballot types.

- 2.1.88 **Primary Election:** Occurs in March of even numbered years (i.e., 2020, 2022, 2024; etc.).
- 2.1.89 **Production Server:** As used herein, the term shall mean the primary Contractor provided system hardware used for all Work under this Contract.
- 2.1.90 **Professional Services:** As used herein, the term shall mean Consulting Services, Additional Training and/or Customizations, which Contractor may provide upon County's request therefor in the form of Optional Work in accordance with Appendix A (Statement of Work).
- 2.1.91 **Project Schedule:** As used herein, the term shall mean the agreed upon timeline for System Implementation Tasks, Subtasks and Deliverables specified in Appendix A (Statement of Work), as identified as Exhibit 4 (Project Schedule).
- 2.1.92 **Proprietary Rights:** As used herein, the term shall mean all legal and equitable rights, including all copyrights, patent rights, trade secrets, trademarks, confidential and proprietary information rights, moral rights and all rights and title in and to the structure, sequence and organization of a work of authorship, and all rights in and to any code, materials, pictures, interfaces, screen displays and audio visual displays and presentations.
- 2.1.93 **Registrar-Recorder/County Clerk:** As used herein, the term shall mean the Head of the Department of Registrar-Recorder/County Clerk of County of Los Angeles.
- 2.1.94 **Release Event(s):** As used herein, the term "Release Event(s)" shall mean any of the following:
 - 1. A receiver, trustee, or similar officer is appointed for the business or property of Contractor; or
 - 2. Contractor files a petition in bankruptcy, files a petition seeking any reorganization (without confirming immediately in writing to the Customer that it will continue to maintain the Software in accordance with the terms of the Agreement or any applicable maintenance agreement), makes an arrangement, composition, or similar relief under any law regarding insolvency or relief for debtors, or makes an assignment for the benefit of creditors; or

3. Any Involuntary petition or proceeding under bankruptcy or insolvency laws is instituted against Contractor and not stayed, enjoined, or discharged within sixty (60) days; or
 4. Contractor takes any corporate action authorizing any of the foregoing; or
 5. Any similar or analogous proceedings or event to those in Sections one (1), two (2), or three (3) above occurs in respect of Contractor within any jurisdiction outside the United States of America; or
 6. Contractor ceases to carry on its business or the part of its business which relates to the Software; or
 7. Contractor or, where relevant, its agent, parent, subsidiary or associated company is in material breach of its obligations as to maintenance or modification of the Software under the Agreement or any maintenance agreement entered into in connection with the Software and has failed to remedy such default notified by the Customer to Contractor within a reasonable period.
- 2.1.95 **Release Notes Report:** As used herein, the term shall mean the document that detail the corrections, changes or enhancements made to any supported portion of the DIMS suite, this includes database, client, services or applications required by DIMSNet.
- 2.1.96 **Responsible:** As used herein shall mean a proposer that has conducted themselves in an acceptable manner as determined by the Board of Supervisors (see County Code 2.202.030) and has the financial and managerial ability to perform the required work.
- 2.1.97 **Responsive:** As used herein shall mean a proposal submitted to the County that complies with all solicitation requirements.
- 2.1.98 **Resolution Time:** As used herein, the term shall mean the period of time from County's notification of a Deficiency to Contractor to its correction in accordance with Exhibit 5 (System Maintenance).
- 2.1.99 **Response Time:** As used herein, the term shall mean the acceptable time period within which Contractor shall respond to County following County's report of any Deficiency, as set forth in Exhibit 5 (System Maintenance).
- 2.1.100 **Scheduled Elections:** Include the Primary and General Elections. The Primary Elections are scheduled in March of even numbered years. General Elections are scheduled in November of even numbered years.
- 2.1.101 **Scheduled Downtime:** Shall have the meaning set forth as defined in Exhibit 5 (System Maintenance).

- 2.1.102 **Sensitive Position:** A person with direct access to County PII data.
- 2.1.103 **Severity Level or SL:** As used herein, the terms shall mean the problem severity levels for correction of Deficiencies, as specified in Exhibit 5 (System Maintenance).
- 2.1.104 **Software Enhancements:** As used herein, the term shall mean Customizations and/or Additional Software, including Solution Modifications and Application Program Interfaces, which Contractor may provide upon County's request therefor in the form of Optional Work in accordance with Appendix A (Statement of Work).
- 2.1.105 **Software Support Fees:** As used herein, the term shall mean the annual fees to be paid by County to Contractor for System Maintenance regarding Application Software, as specified in Appendix B (Pricing Schedule).
- 2.1.106 **Solution Modifications:** As used herein, the term shall mean modifications to the Application Software, including system solution, and related Documentation, which Contractor may provide upon County's request therefor as Customizations in accordance with Appendix A (Statement of Work), which will update County's solution and shall become part of, and be deemed, System Software for the purpose of this Contract.
- 2.1.107 **Source Code:** As used herein, the term "Source Code" shall mean the source code for Application Software, to the extent available, developed for or licensed to County under this Agreement by Contractor, including Core Application and Application Modifications, together with all Documentation and other proprietary information related to such source code.
- 2.1.108 **Source Code Escrow Contract:** As used herein, the term "Source Code Escrow Contract" shall mean an agreement between Contractor and a third-party Source Code escrow agent, including all addenda, amendments and modifications thereto, for depositing the Source Code in accordance with Paragraph 10.3 (Source Code Escrow), incorporated herein by reference as Appendix I (Source Code Escrow Contract).
- 2.1.109 **Special Election:** An unscheduled election conducted as requested where the County is notified by the Board of Supervisors of the County or Governor, no later than sixty-one (61) days before a Special Election as to the services the County is to provide (Elections Code 10002). Special Elections are elections conducted when called, on as-needed basis.
- 2.1.110 **Specifications:** As used herein, the term shall mean any or all of the following, as applicable:

1. All System Performance Requirements and standards set forth in this Contract, including, but not limited to, requirements for system availability and system response time identified in Exhibit 5 (System Maintenance).
 2. The Documentation, to the extent not inconsistent with any of the foregoing in this definition.
 3. All specifications identified as such by Contractor, including, but not limited to, the Project Schedule and the Project Control Document, but only to the extent: (i) not inconsistent with any of the foregoing in this Paragraph; and (ii) acceptable to County in its sole discretion.
 4. All system environment requirements and certifications provided by Contractor in accordance with this Contract with respect to the system.
 5. All written and/or electronic materials furnished by or through Contractor regarding the Application Software or the system, including functionality, features, capacity, availability, response times, accuracy or any other performance or other system criteria or any element of the System or any system component.
- 2.1.111 **State:** As used herein, the term shall mean the State of California.
- 2.1.112 **Statement of Work or SOW:** The directions, provisions, and requirements provided herein and special provisions pertaining to the method, frequency, manner and place of performing the contract services stated in Appendix A (Statement of Work).
- 2.1.113 **Statewide Election:** An election held throughout the State. "Uniform District Election Law" (UDEL) (also known as Local and Municipal Consolidated Election) - An election conducted in November of odd number years (i.e., 2021, 2023, 2025; etc.).
- 2.1.114 **Statewide Voter Registration Database:** A single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level.
- 2.1.115 **Subcontract:** A contract by the contractor to employ a subcontractor to provide services to fulfill this contract.
- 2.1.116 **Subcontractor:** Any individual, person or persons, sole proprietor, firm, partnership, joint venture, corporation, or other legal entity furnishing supplies, services of any nature, equipment, and/or materials to contractor in furtherance of contractor's performance of this contract, at any tier, under oral or written contract.

- 2.1.117 **Support Hours:** 7:00 a.m. to 5:00 p.m. Pacific Local Time daily.
- 2.1.118 **Support Services:** As used herein, the term shall have the meaning specified in Exhibit 5 (System Maintenance) and shall comprise part of System Maintenance provided by Contractor under this Contract.
- 2.1.119 **System Availability:** As used herein, the term "System Availability" shall mean the percentage of time during any month of System Maintenance when the System does not experience any Downtime and all System Components available to County.
- 2.1.120 **System Data:** As used herein, the term "System Data" shall mean all County Data and external data, whether provided by County or Contractor during the term of this Contract.
- 2.1.121 **System Environment:** As used herein, the term "System Environment" shall mean System Hardware, System Network and Third-Party Software components provided by Contractor in accordance with Contractor's specifications or by Contractor.
- 2.1.122 **System Hardware:** As used herein, the term "System Hardware" shall mean the Production Server, Back-Up Server and other equipment provided by Contractor for the System and performance of Work pursuant to this Contract.
- 2.1.123 **System Performance Deficiency:** As used herein, the term shall mean failure by the system to meet any of the System Performance Requirements as specified in Exhibit 5 (System Maintenance).
- 2.1.124 **System Performance Requirements:** As used herein, the term shall mean the performance requirements for the system, including system availability, System Response Time and Back-up Server Hosting as specified in Exhibit 5 (System Maintenance).
- 2.1.125 **System Performance Warranty:** As used herein, the term shall mean Contractor's warranty to meet System Performance Requirements as specified in Exhibit 5 (System Maintenance).
- 2.1.126 **System Requirements:** As used herein, the term shall mean business, operational, technical and/or functional requirements relating to the operation or utilization of the system, as specified in Appendix A (Statement of Work).
- 2.1.127 **System Response Time:** As used herein, the term shall mean the time elapsed from the entry of a query at a workstation to the time the workstation fully displays the complete results, as may be further specified in Exhibit 5 (System Maintenance).
- 2.1.128 **System Software:** As used herein, the term shall mean Application Software and any Third-Party Software, and related

Documentation, provided under this Contract by Contractor in accordance with Contractor's specifications or by Contractor, as applicable, as further specified in Appendix A (Statement of Work), including Application Modifications, Solution Modifications, and Software Enhancements.

- 2.1.129 **System Support Fees:** As used herein, the term shall mean the monthly fees to be paid by County to Contractor for System Maintenance, as specified in Appendix B (Pricing Schedule).
- 2.1.130 **System Upgrade** shall have the meaning set forth in Section 5.2 (System Performance Requirements and Deficiencies).
- 2.1.131 **Task or task and Subtask or subtask:** As used herein, the terms, whether singular or plural, shall mean one of the areas of work to be performed under this Contract, including those identified as numbered Tasks and Subtasks in Appendix A (Statement of Work).
- 2.1.132 **Test Environment:** As used herein, the term shall mean the non-production System Environment set up by Contractor pursuant to Appendix A (Statement of Work) for Application Software implementation, System Tests and System Training.
- 2.1.133 **Update(s):** As used herein, the term, whether singular or plural, shall mean and include any additions to and/or replacements to the Application Software, available or made available subsequent to Final Acceptance, and shall include all Application Software performance and functionality enhancement releases, new Version Releases, System Software upgrades, improvements, interim updates, including fixes and patches, Deficiency corrections, and modifications to the Application Software, including those required for the System Software to remain in compliance with applicable Federal and State laws and regulations and the terms of this Contract, provided by Contractor in accordance with Exhibit 5 (System Maintenance) with all Schedules thereto.
- 2.1.134 **User(s) or user(s):** As used herein, the terms, whether singular or plural, shall mean any person or entity authorized by County of Los Angeles or Department of Registrar-Recorder/County Clerk to access or use the system pursuant to this Contract.
- 2.1.135 **User Acceptance Test:** As used herein, the term shall mean the System Test conducted in accordance with Appendix A (Statement of Work).
- 2.1.136 **Version Release:** As used herein, the term shall mean Contractor's Application Software major version upgrade which contains new software functionalities and features and/or system compatibilities, including any Replacement Product.

- 2.1.137 **Vote Center:** Refers to location where voters will have the freedom to cast a ballot in-person within their county instead of being tied to a single polling location. Vote centers look and feel like polling places but provide additional modern features to make voting easy and convenient. Vote centers are required to be operational (ten) 10 days prior to an election through election day as well as have the ability for a voter to vote in-person, drop off their ballot, get a replacement ballot, vote using an accessible voting machine, get help and voting material in multiple languages, register to vote or update their voter registration.
- 2.1.138 **Voter History:** Refers to the electronic record of each time a voter participates in a state or Federal election.
- 2.1.139 **Voter Information Management System or VIMS:** A software application system that automates voter registration and election management functions.
- 2.1.140 **VoteCal System:** Refers to California's Statewide Voter Registration Database.
- 2.1.141 **Voter Registration File:** Also known as Voter File or Voter Index File, as pursuant to Article 5 commencing with section 2180 of the California Election Code, is a file of all voter registration records in Los Angeles County. The file includes a variety of voter types: permanent, declared, military, overseas, foreign language voters, etc.
- 2.1.142 **Voter Registration System License and Support Services:** Refers to a voter registration and election management application that enables election officials to register voters and conduct elections from a central data store. This system allows for both single jurisdictions and states to manage elections from the same interface.
- 2.1.143 **Warranties:** As used herein, the term shall mean the warranties regarding Contractor's performance under the Contract, including the system, as specified in Exhibit 5 (System Maintenance). This definition does not limit or preclude any other warranties implied by law or equity into this Contract.
- 2.1.144 **Warranty Period:** As used herein, the term shall have the meaning set forth in Exhibit 5 (System Maintenance).
- 2.1.145 **Web or Web Services:** As used herein, the terms shall mean a software system designed to support interoperable computer interactions over a network.
- 2.1.146 **Web-Server Hosting:** As used herein, the term shall mean system operation at a physical location that houses the dedicated servers, hardware and networks for the DIMS and

provides direct Web access to the internet, as further specified in Appendix A (Statement of Work).

2.1.147 **Wide Area Network or WAN:** Refers to a collection of data network that covers a broad area (i.e., any telecommunications network that links across metropolitan, regional, national or international boundaries) using leased or privately-owned data links.

2.1.148 **Work:** As used herein, the term shall mean any and all tasks, subtasks, deliverables, goods, services and other work provided, or to be provided, by or on behalf of Contractor pursuant to this Contract, including system components, system implementation services, system maintenance and Optional Work.

3 WORK

- 3.1 Pursuant to the provisions of this Contract, the Contractor shall fully perform, complete and deliver on time, all tasks, deliverables, services and other work as set forth in herein.
- 3.2 If the Contractor provides any tasks, deliverables, goods, services, or other work, other than as specified in this contract, the same shall be deemed to be a gratuitous effort on the part of the contractor, and the contractor shall have no claim whatsoever against the County.

4 TERM OF CONTRACT

- 4.1 The term of this Contract shall be two (2) years commencing after execution by County's Board of Supervisors, unless sooner terminated or extended, in whole or in part, as provided in this Contract.
- 4.2 The County shall have the sole option to extend this Contract term for up to two (2) additional one (1) year periods, for a maximum total Contract term of four (4) years. Each such extension option may be exercised at the sole discretion of the County.

The County maintains a database that tracks/monitors contractor performance history. Information entered into the database may be used for a variety of purposes, including determining whether the County will exercise a contract term extension option.

- 4.3 The Contractor shall notify Department when this Contract is within eight (8) months of the expiration of the term as provided for hereinabove. Upon occurrence of this event, the Contractor shall send written (hard copy and e-mail) notification to Department at the Contracts and Grants Manager's address herein provided in Appendix D (County's Administration). County shall deliver written notice of any exercise of its option to extend to Contractor within six (6) months of the expiration of the term of the contract.

5 CONTRACT SUM

5.1 Total Contract Sum

- 5.1.1 The "Contract Sum" under this Contract shall be the total monetary amount payable by County to Contractor for supplying all Tasks, Subtasks, Deliverables, goods, services, and other Work specified under this Contract. The Contract Sum for this Contract, including all applicable taxes, authorized by County hereunder is Three Million One Hundred Forty-Nine Thousand One Hundred Fifty-One Dollars (\$3,149,151.00).
- 5.1.2 The fees and other applicable rates for the Term of the Contract are set forth in Appendix B (Pricing Schedule). Contractor's fees shall remain firm and fixed prices for the Term of the Contract. The RR/CC, or designee, at their sole discretion, may increase the Contract Sum up to a maximum of ten percent (10%) of the Contract Sum Three Hundred Fourteen Thousand Nine Hundred Fifteen Dollars (\$314,915.00) over the Term of the Contract, including any extensions thereof.
- 5.1.3 An Amendment to this Contract shall be prepared and executed by the Contractor and by the RR/CC or designee, provided County Counsel approval is obtained prior to execution of such Amendment.
- 5.1.4 The maximum Contract Sum shall not exceed Three Million Four Hundred Sixty-Four Thousand Sixty-Six Dollars (\$3,464,066.00).

5.2 Notification of 75% of Total Contract Sum

- 5.2.1 The Contractor shall maintain a system of record keeping that will allow the Contractor to determine when it has incurred seventy-five percent (75%) of the total contract sum under this Contract. Upon occurrence of this event, the Contractor shall send written (hard copy and e-mail) notification to Department at the Contract and Grants Manager's address herein provided in Appendix D (County's Administration).

5.3 No Payment for Services Provided Following Expiration-Termination of Contract

- 5.3.1 The Contractor shall have no claim against County for payment of any money or reimbursement, of any kind whatsoever, for any service provided by the Contractor after the expiration or other termination of this Contract, unless agreed to, in writing, by the parties. Should the Contractor receive any such payment it shall immediately notify County and shall immediately repay all such

funds to County. Payment by County for services rendered after expiration-termination of this Contract shall not constitute a waiver of County's right to recover such payment from the Contractor. This provision shall survive the expiration or other termination of this Contract.

5.4 Invoices and Payments

5.4.1 The Contractor shall invoice the County only for providing the tasks, deliverables, goods, services, and other work specified in Appendix A (Statement of Work) and elsewhere hereunder. The Contractor shall prepare invoices, which shall include the charges owed to the Contractor by the County under the terms of this Contract. The Contractor's payments shall be as provided in Appendix B (Pricing Schedule) and the Contractor shall be paid only for the tasks, deliverables, goods, services, and other work approved in writing by the County. If the County does not approve work in writing no payment shall be due to the Contractor for that work.

5.4.2 The Contractor's invoices shall be priced in accordance with Appendix B (Pricing Schedule).

5.4.3 The Contractor's invoices shall contain the information set forth in Appendix A (Statement of Work) describing the tasks, deliverables, goods, services, work hours, and facility and/or other work for which payment is claimed.

All invoices submitted by Contractor for payment must have the applicable Task/Deliverable Acceptance Certificate signed by Contractor's Project Director and County Project Director, or designee, prior to any payment thereof. In no event shall County be liable or responsible for any payment prior to such written approval.

Early payment for annual and month-to-month periods for services during the term of this Contract shall be permitted without an attached Task/Deliverable Acceptance Certificate. However, if the Contractor is unable to fulfill any portion of the Contract services during the Term or the Contract is terminated by the County as referenced in Paragraphs 8.41 through 8.47 of the Contract, the Contractor will reimburse the County a prorated amount for any portion of the services not performed as outlined in, but not limited to, the Statement of Work, Pricing Schedule, and Amendment(s).

5.4.4 The Contractor shall submit the monthly invoices to the County by the 15th calendar day of the month following the month of service.

- 5.4.5 All invoices under this Contract shall be submitted electronically (via e-mail to the County) and by mail to the following addresses:

Department of Registrar-Recorder/County Clerk
 Financial Services Section
 12400 Imperial Highway
 Room 7213
 Norwalk, CA 90650
accountspayable@rrcc.lacounty.gov

5.4.6 County Approval of Invoices

All invoices submitted by the Contractor for payment must have the written approval of the County's Project Manager prior to any payment thereof. In no event shall the County be liable or responsible for any payment prior to such written approval. Approval for payment for approved Deliverables will not be unreasonably withheld for thirty (30) days from submission.

5.5 Default Method of Payment: Direct Deposit or Electronic Funds Transfer

- 5.5.1 The County, at its sole discretion, has determined that the most efficient and secure default form of payment for goods and/or services provided under a contract with the County shall be Electronic Funds Transfer (EFT) or direct deposit, unless an alternative method of payment is deemed appropriate by the Auditor-Controller (A-C).

- 5.5.2 The Contractor shall submit a direct deposit authorization request via the website <https://directdeposit.lacounty.gov> with banking and vendor information, and any other information that the A-C determines is reasonably necessary to process the payment and comply with all accounting, record keeping, and tax reporting requirements.

- 5.5.3 Any provision of law, grant, or funding contract requiring a specific form or method of payment other than EFT or direct deposit shall supersede this requirement with respect to those payments.

- 5.5.4 At any time during the duration of the contract, a Contractor may submit a written request for an exemption to this requirement.

Such request must be based on specific legal, business or operational needs and explain why the payment method designated by the A-C is not feasible and an alternative is necessary. The A-C, in consultation with the contracting

department(s), shall decide whether to approve exemption requests.

6 ADMINISTRATION OF CONTRACT - COUNTY

6.1 County Administration

6.1.1 A listing of all County Administration referenced in the following subparagraphs are designated in Appendix D (County's Administration). The County will notify the Contractor in writing of any change in the names or addresses shown.

6.2 County's Project Director

6.2.1 The role of the County's Project Director may include:

6.2.1.1 Coordinating with Contractor and ensuring Contractor's performance of the Contract; however, in no event shall Contractor's obligation to fully satisfy all of the requirements of this Contract be relieved, excused or limited thereby; and

6.2.1.2 Upon request of the Contractor, providing direction to the Contractor, as appropriate in areas relating to County policy, information requirements, and procedural requirements; however, in no event, shall Contractor's obligation to fully satisfy all of the requirements of this Contract be relieved, excused or limited thereby.

6.3 County's Project Manager

6.3.1 The role of the County's Project Manager is authorized to include:

6.3.1.1 Meeting with the Contractor's Project Manager on a regular basis; and

6.3.1.2 Inspecting any and all tasks, deliverables, goods, services, or other work provided by or on behalf of the Contractor; however, in no event shall Contractor's obligation to fully satisfy all of the requirements of this Contract be relieved, excused or limited thereby.

The County's Project Manager is not authorized to make any changes in any of the terms and conditions of this Contract and is not authorized to further obligate County in any respect whatsoever.

6.4 County's Contract Project Monitor

- 6.4.1 The role of the County's Project Monitor is to oversee the day-to-day administration of this Contract; however, in no event shall Contractor's obligation to fully satisfy all of the requirements of this Contract be relieved, excused or limited thereby. The Project Monitor reports to the County's Project Manager.

7 ADMINISTRATION OF CONTRACT - CONTRACTOR

7.1 Contractor Administration

A listing of all of Contractor's Administration referenced in the following paragraphs is designated in Appendix E (Contractor's Administration). The Contractor will notify the County in writing of any change in the names or addresses shown via a Change Notice with an updated Appendix E (Contractor's Administration) attached to a memo on company letterhead.

7.2 Contractor's Project Manager

- 7.2.1 The Contractor's Project Manager is designated in Appendix E (Contractor's Administration). The Contractor shall notify the County in writing of any change in the name or address of the Contractor's Project Manager.
- 7.2.2 The Contractor's Project Manager shall be responsible for the Contractor's day-to-day activities as related to this Contract and shall meet and coordinate with County's Project Manager and County's Contract Project Monitor on a regular basis.

7.3 Approval of Contractor's Staff

County has the absolute right to approve or disapprove all of the Contractor's staff performing work hereunder and any proposed changes in the Contractor's staff, including, but not limited to, the Contractor's Project Manager.

7.4 Contractor's Staff Identification

Contract shall provide, at Contractor's expense, all staff providing services at County facilities under this Contract with a photo identification badge.

All of Contractor's employees assigned to County facilities are required to have a County Identification (ID) badge on their person and visible at all times. Contractor bears all expense of the badging.

- 7.4.1 Contractor is responsible to ensure that employees have obtained a County ID badge before they are assigned to work in a County facility. Contractor personnel may be asked by a County

representative to leave a County facility if they do not have the proper County ID badge on their person and Contractor personnel must immediately comply with such request.

7.4.2 Contractor shall notify the County within one business day when staff is terminated from working under this Contract. Contractor shall retrieve and return an employee's County ID badge to the County on the next business day after the employee has terminated employment with the Contractor.

7.4.3 If County requests the removal of Contractor's staff, Contractor shall retrieve and return an employee's County ID badge to the County on the next business day after the employee has been removed from working on the County's Contract.

7.5 Background and Security Investigations

7.5.1 Each of Contractor's staff performing services under this Contract, who is in a designated sensitive position, as determined by County in County's sole discretion, shall undergo and pass a background investigation to the satisfaction of County as a condition of beginning and continuing to perform services under this Contract. Such background investigation must be obtained through fingerprints submitted to the California Department of Justice to include State, local, and federal-level review, which may include, but shall not be limited to, criminal conviction information. The fees associated with the background investigation shall be at the expense of the Contractor, regardless of whether the member of Contractor's staff passes or fails the background investigation.

If a member of Contractor's staff does not pass the background investigation, County may request that the member of Contractor's staff be removed immediately from performing services under the Contract. Contractor shall comply with County's request at any time during the term of the Contract. County will not provide to Contractor or to Contractor's staff any information obtained through the County's background investigation.

7.5.2 County, in its sole discretion, may immediately deny or terminate facility access to any member of Contractor's staff that does not pass such investigation to the satisfaction of the County or whose background or conduct is incompatible with County facility access.

7.5.3 Disqualification of any member of Contractor's staff pursuant to this Paragraph 7.5 shall not relieve Contractor of its obligation to

complete all work in accordance with the terms and conditions of this Contract.

7.6 Confidentiality

- 7.6.1 Contractor shall maintain the confidentiality of all records and information in accordance with all applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures relating to confidentiality, including, without limitation, County policies concerning information technology security and the protection of confidential records and information.
- 7.6.2 Contractor shall indemnify, defend, and hold harmless County, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting, or professional fees, arising from, connected with, or related to any failure by Contractor, its officers, employees, agents, or subcontractors, to comply solely with this Paragraph 7.6, as determined by County in its sole judgment. Any legal defense pursuant to contractor's indemnification obligations under this Paragraph 7.6 shall be conducted by contractor and performed by counsel selected by Contractor and approved by County. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide County with a full and adequate defense, as determined by County in its sole judgment, County shall be entitled to retain its own counsel, including, without limitation, County Counsel, and to reimbursement from Contractor for all such costs and expenses incurred by County in doing so. Contractor shall not have the right to enter into any settlement, agree to any injunction, or make any admission, in each case, on behalf of County without County's prior written approval.
- 7.6.3 Contractor shall inform all of its officers, employees, agents and subcontractors providing services hereunder of the confidentiality provisions of this Contract.
- 7.6.4 Contractor shall sign and adhere to the provisions of the "Contractor Acknowledgement and Confidentiality Agreement", Appendix F.

8 STANDARD TERMS AND CONDITIONS

8.1 Amendments and Change Orders

- 8.1.1 For any change which affects the scope of work, term, contract sum, payments, or any term or condition included under this Contract, a mutually agreed upon amendment to the Contract shall be prepared and executed by the contractor and by RR/CC or designee.
- 8.1.2 The County's Board of Supervisors or Chief Executive Officer or designee may require the addition and/or change of certain terms and conditions in the Contract during the term of this Contract. The County reserves the right to add and/or change such provisions as required by the County's Board of Supervisors or Chief Executive Officer. To implement such changes, an Amendment to the Contract shall be prepared and executed by the contractor and by RR/CC or designee.
- 8.1.3 The RR/CC or designee, with Board of Supervisors approval, may at his/her sole discretion, authorize extensions of time as defined in Paragraph 4 (Term of Contract). The contractor agrees that such extensions of time shall not change any other term or condition of this Contract during the period of such extensions. To implement an extension of time, an Amendment to the Contract shall be prepared and executed by the contractor and by RR/CC or designee.
- 8.1.4 The County reserves the right to initiate Change Orders that either (i) do not (a) affect the Contract Term or Contract Sum or payments and (b) materially alter the Contract. All such changes shall be executed with a Change Order to this Contract signed by the Contractor and by the County's Project Director (or either such party's designee); provided that any Change Order for Additional Work shall additionally require an additional Statement of Work, or amendment to the Statement of Work, and written approval of County's Chief Information Office and County Counsel. Should the Contractor's costs substantially increase due to an Amendment made pursuant to Paragraph 8.1.2, the parties will negotiate in good faith a Change Order to address those cost increases.
- 8.1.5 For any change which is clerical or administrative in nature and/or does not affect any term or condition of this Contract, a written Change Notice may be prepared and executed by the RR/CC or designee.

8.2 Assignment and Delegation/Mergers or Acquisitions

8.2.1 The contractor shall notify the County of any pending acquisitions/mergers of its company unless otherwise legally prohibited from doing so. If the contractor is restricted from legally

notifying the County of pending acquisitions/mergers, then it should notify the County of the actual acquisitions/mergers as soon as the law allows and provide to the County the legal framework that restricted it from notifying the County prior to the actual acquisitions/mergers.

8.2.2 The contractor shall not assign its rights or delegate its duties under this Contract, or both, whether in whole or in part, without the prior written consent of County, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this paragraph, County consent shall require a written Amendment to the Contract, which is formally approved and executed by the parties. Any payments by the County to any approved delegatee or assignee on any claim under this Contract shall be deductible, at County's sole discretion, against the claims, which the contractor may have against the County.

8.2.3 Shareholders, partners, members, or other equity holders of contractor may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of contractor to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Contract, such disposition is an assignment requiring the prior written consent of County in accordance with applicable provisions of this Contract.

8.2.4 Any assumption, assignment, delegation, or takeover of any of the contractor's duties, responsibilities, obligations, or performance of same by any person or entity other than the contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without County's express prior written approval, shall be a material breach of the Contract which may result in the termination of this Contract. In the event of such termination, County shall be entitled to pursue the same remedies against contractor as it could pursue in the event of default by contractor.

8.3 Authorization Warranty

The contractor represents and warrants that the person executing this Contract for the contractor is an authorized agent who has actual authority to bind the contractor to each and every term, condition, and obligation of this Contract and that all requirements of the contractor have been fulfilled to provide such actual authority.

8.4 Budget Reductions

In the event that the County's Board of Supervisors adopts, in any fiscal year, a County Budget which provides for reductions in the salaries and benefits paid to the majority of County employees and imposes similar reductions with respect to County contracts, the County reserves the right to reduce its payment obligation under this Contract correspondingly for that fiscal year and any subsequent fiscal year during the term of this Contract (including any extensions), and the services to be provided by the contractor under this Contract shall also be reduced correspondingly. The County's notice to the contractor regarding said reduction in payment obligation shall be provided within thirty (30) calendar days of the Board's approval of such actions. Except as set forth in the preceding sentence, the contractor shall continue to provide all of the services set forth in this Contract.

8.4.1 County hereby confirms it maintains sufficient funds to satisfy payment obligations to Contractor through the six (6) months from Contract Effective Date.

8.5 Complaints

8.5.1 The contractor shall develop, maintain and operate procedures for receiving, investigating and responding to complaints.

8.5.2 Complaint Procedures

8.5.2.1 Within thirty (30) business days after the Contract effective date, the contractor shall provide the County with the contractor's policy for receiving, investigating and responding to user complaints.

8.5.2.2 The County will review the contractor's policy and provide the contractor with approval of said plan or with requested changes.

8.5.2.3 If the County requests changes in the contractor's policy, the contractor shall make such changes and resubmit the plan within five (5) business days for County approval.

- 8.5.2.4 If, at any time, the contractor wishes to change the contractor's policy, the contractor shall submit proposed changes to the County for approval before implementation.
- 8.5.2.5 The contractor shall preliminarily investigate all complaints and notify the County's Project Manager of the status of the investigation within five (5) business days of receiving the complaint.
- 8.5.2.6 When complaints cannot be resolved informally, a system of follow-through shall be instituted which adheres to formal plans for specific actions and strict time deadlines.
- 8.5.2.7 Copies of all written responses shall be sent to the County's Project Manager within three (3) business days of mailing to the complainant.

8.6 Compliance with Applicable Law

- 8.6.1 In the performance of this Contract, contractor shall comply with all applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures, and all provisions required thereby to be included in this Contract are hereby incorporated herein by reference.
- 8.6.2 Contractor shall indemnify, defend, and hold harmless County, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs, and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting or professional fees, arising from, connected with, or related to any failure by contractor, its officers, employees, agents, or subcontractors, to comply with any such laws, rules, regulations, ordinances, directives, guidelines, policies, or procedures, as determined by County in its sole judgment. Any legal defense pursuant to contractor's indemnification obligations under Paragraph 8.6 (Compliance with Applicable Law) shall be conducted by contractor and performed by counsel selected by contractor and approved by County. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event contractor fails to provide County with a full and adequate defense, as determined by County in its sole judgment, County shall be entitled to retain its own counsel, including, without limitation, County Counsel, and to reimbursement from contractor for all such costs and expenses incurred by County in doing so. Contractor shall not have the right to enter into any settlement,

agree to any injunction or other equitable relief, or make any admission, in each case, on behalf of County without County's prior written approval.

8.7 Compliance with Civil Rights Laws

The contractor hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17), to the end that no person shall, on the grounds of race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract. The contractor shall comply with Appendix C (Contractor's EEO Certification).

8.8 Compliance with the County's Jury Service Program

8.8.1 Jury Service Program

This Contract is subject to the provisions of the County's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code, a copy of which is attached as Appendix G and incorporated by reference into and made a part of this Contract.

8.8.2 Written Employee Jury Service Policy

1. Unless the contractor has demonstrated to the County's satisfaction either that the contractor is not a "contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that the contractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), the contractor shall have and adhere to a written policy that provides that its Employees shall receive from the contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with the contractor or that the contractor deducts from the Employee's regular pay the fees received for jury service.
2. For purposes of this paragraph, "contractor" means a person, partnership, corporation or other entity which has a contract with the County or a subcontract with a County contractor and has received or will receive an aggregate sum of fifty thousand dollars (\$50,000) or more in any twelve (12) month period under one or more County contracts or

subcontracts. "Employee" means any California resident who is a full-time employee of the contractor. "Full-time" means forty (40) hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the County, or 2) contractor has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of ninety (90) days or less within a twelve (12) month period are not considered full-time for purposes of the Jury Service Program. If the contractor uses any subcontractor to perform services for the County under the Contract, the subcontractor shall also be subject to the provisions of this paragraph. The provisions of this paragraph shall be inserted into any such subcontract contract and a copy of the Jury Service Program shall be attached to the contract.

3. If the contractor is not required to comply with the Jury Service Program when the Contract commences, the contractor shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and the contractor shall immediately notify the County if the contractor at any time either comes within the Jury Service Program's definition of "contractor" or if the contractor no longer qualifies for an exception to the Jury Service Program. In either event, the contractor shall immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during the Contract and at its sole discretion, that the contractor demonstrate, to the County's satisfaction that the contractor either continues to remain outside of the Jury Service Program's definition of "contractor" and/or that the contractor continues to qualify for an exception to the Program.
4. Contractor's violation of this paragraph of the Contract may constitute a material breach of the Contract. In the event of such material breach, County may, in its sole discretion, terminate the Contract and/or bar the contractor from the award of future County contracts for a period of time consistent with the seriousness of the breach.

8.9 Conflict of Interest

- 8.9.1 No County employee whose position with the County enables such employee to influence the award of this Contract or any competing Contract, and no spouse or economic dependent of such employee, shall be employed in any capacity by the contractor or have any other direct or indirect financial interest in

this Contract. No officer or employee of the contractor who may financially benefit from the performance of work hereunder shall in any way participate in the County's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the County's approval or ongoing evaluation of such work.

- 8.9.2 The contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Contract. The contractor warrants that it is not now aware of any facts that create a conflict of interest. If the contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this paragraph shall be a material breach of this Contract.

8.10 Consideration of Hiring County Employees Targeted for Layoff or Re-Employment List

Should the contractor require additional or replacement personnel after the effective date of this Contract to perform the services set forth herein, the contractor shall give first consideration for such employment openings to qualified, permanent County employees who are targeted for layoff or qualified, former County employees who are on a re-employment list during the life of this Contract.

8.11 Consideration of Hiring GAIN-GROW Participants

- 8.11.1 Should the contractor require additional or replacement personnel after the effective date of this Contract, the contractor shall give consideration for any such employment openings to participants in the County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet the contractor's minimum qualifications for the open position. For this purpose, consideration shall mean that the contractor will interview qualified candidates. The County will refer GAIN-GROW participants by job category to the contractor. Contractors shall report all job openings with job requirements to: GAINGROW@DPSS.LACOUNTY.GOV and BSERVICES@WDACS.LACOUNTY.GOV and DPSS will refer qualified GAIN/GROW job candidates.

- 8.11.2 In the event that both laid-off County employees and GAIN/GROW participants are available for hiring, County employees shall be given first priority.

8.12 Contractor Responsibility and Debarment

8.12.1 Responsible Contractor

A responsible contractor is a contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with responsible contractors.

8.12.2 Chapter 2.202 of the County Code

The contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the contractor on this or other contracts which indicates that the contractor is not responsible, the County may, in addition to other remedies provided in the Contract, debar the contractor from bidding or proposing on, or being awarded, and/or performing work on County contracts for a specified period of time, which generally will not exceed five (5) years but may exceed five (5) years or be permanent if warranted by the circumstances, and terminate any or all existing contracts the contractor may have with the County.

8.12.3 Non-responsible contractor

The County may debar a contractor if the Board of Supervisors finds, in its discretion, that the contractor has done any of the following: 1) violated a term of a contract with the County or a nonprofit corporation created by the County, 2) committed an act or omission which negatively reflects on the contractor's quality, fitness or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same, 3) committed an act or offense which indicates a lack of business integrity or business honesty, or 4) made or submitted a false claim against the County or any other public entity.

8.12.4 Contractor Hearing Board

- 8.12.4.1 If there is evidence that the contractor may be subject to debarment, the Department will notify the contractor in writing of the evidence which is the basis for the proposed debarment and will advise the

contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.

- 8.12.4.2 The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The contractor and/or the contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether the contractor should be debarred, and, if so, the appropriate length of time of the debarment. The contractor and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.
- 8.12.4.3 After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.
- 8.12.4.4 If a contractor has been debarred for a period longer than five (5) years, that contractor may after the debarment has been in effect for at least five (5) years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that the contractor has adequately demonstrated one or more of the following: 1) elimination of the grounds for which the debarment was imposed; 2) a bona fide change in ownership or management; 3) material evidence discovered after debarment was imposed; or 4) any other reason that is in the best interests of the County.
- 8.12.4.5 The Contractor Hearing Board will consider a request for review of a debarment determination only where 1) the contractor has been debarred for a period longer than five (5) years; 2) the debarment has been in effect for at least five (5) years; and 3) the request is in writing, states one or more of the

grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.

- 8.12.4.6 The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

8.12.5 Subcontractors of Contractor

These terms shall also apply to subcontractors of County contractors.

8.13 Contractor's Acknowledgement of County's Commitment to Safely Surrendered Baby Law

The contractor acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. The contractor understands that it is the County's policy to encourage all County contractors to voluntarily post the County's "Safely Surrendered Baby Law" poster, in Appendix H, in a prominent position at the contractor's place of business. The contractor will also encourage its subcontractors, if any, to post this poster in a prominent position in the subcontractor's place of business. Information and posters for printing are available at www.babysafela.org.

8.14 Contractor's Warranty of Adherence to County's Child Support Compliance Program

- 8.14.1 The contractor acknowledges that the County has established a goal of ensuring that all individuals who benefit financially from the County through contracts are in compliance with their court-ordered child, family and spousal support obligations in order to

mitigate the economic burden otherwise imposed upon the County and its taxpayers.

- 8.14.2 As required by the County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting the contractor's duty under this Contract to comply with all applicable provisions of law, the contractor warrants that it is now in compliance and shall during the term of this Contract maintain in compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

8.15 County's Quality Assurance Plan

The County or its agent(s) will monitor the contractor's performance under this Contract on not less than an annual basis. Such monitoring will include assessing the contractor's compliance with all Contract terms and conditions and performance standards. Contractor deficiencies which the County determines are significant or continuing and that may place performance of the Contract in jeopardy if not corrected will be reported to the Board of Supervisors and listed in the appropriate contractor performance database. The report to the Board will include improvement/corrective action measures taken by the County and the contractor. If improvement does not occur consistent with the corrective action measures, the County may terminate this Contract or impose other penalties as specified in this Contract.

8.16 Damage to County Facilities, Buildings or Grounds

- 8.16.1 The contractor shall repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings, or grounds caused by the contractor or employees or agents of the contractor. Such repairs shall be made immediately after the contractor has become aware of such damage, but in no event later than thirty (30) days after the occurrence.
- 8.16.2 If the contractor fails to make timely repairs, County may make any necessary repairs. All costs incurred by County, as determined by County, for such repairs shall be repaid by the contractor by cash payment upon demand.

8.17 Employment Eligibility Verification

- 8.17.1 The contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. The contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as they currently exist and as they may be hereafter amended. The contractor shall retain all such documentation for all covered employees for the period prescribed by law.
- 8.17.2 The contractor shall indemnify, defend, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

8.18 Facsimile Representations

The County and the contractor hereby agree to regard facsimile representations of original signatures of authorized officers of each party, when appearing in appropriate places on this Contract or Amendments, Change Orders and Change Notices prepared pursuant to Paragraph 8.1 (Amendments and Change Orders) and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to this Contract or Amendments, Change Orders and Change Notices to this Contract, such that the parties need not follow up facsimile transmissions of such documents with subsequent (non-facsimile) transmission of "original" versions of such documents.

8.19 Fair Labor Standards

The contractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act and shall indemnify, defend, and hold harmless the County and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by the contractor's employees for which the County may be found jointly or solely liable.

8.20 Force Majeure

- 8.20.1 Neither party shall be liable for such party's failure to perform its obligations under and in accordance with this Contract, if such failure arises out of fires, floods, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by such party or any of such party's subcontractors), freight embargoes, or other similar events to those described above, but in every such case the failure to perform must be totally beyond the control and without any fault or negligence of such party (such events are referred to in this paragraph as "force majeure events"). Notwithstanding the foregoing, the current COVID-19 pandemic is a known event and does not excuse Contractor's performance of its obligations hereunder.
- 8.20.2 Notwithstanding the foregoing, a default by a subcontractor of contractor shall not constitute a force majeure event, unless such default arises out of causes beyond the control of both contractor and such subcontractor, and without any fault or negligence of either of them. In such case, contractor shall not be liable for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit contractor to meet the required performance schedule. As used in this subparagraph, the term "subcontractor" and "subcontractors" mean subcontractors at any tier.
- 8.20.3 In the event contractor's failure to perform arises out of a force majeure event, contractor agrees to use commercially reasonable best efforts to obtain goods or services from other sources, if applicable, and to otherwise mitigate the damages and reduce the delay caused by such force majeure event.

8.21 Governing Law, Jurisdiction, and Venue

This Contract shall be governed by, and construed in accordance with, the laws of the State of California. The Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Contract and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

8.22 Independent Contractor Status

- 8.22.1 This Contract is by and between the County and the Contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the County and the

contractor. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.

8.22.2 The Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Contract all compensation and benefits. The County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the contractor.

8.22.3 The Contractor understands and agrees that all persons performing work pursuant to this Contract are, for purposes of Workers' Compensation liability, solely employees of the contractor and not employees of the County. The contractor shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of the contractor pursuant to this Contract.

8.22.4 The Contractor shall adhere to the provisions stated in Paragraph 7.6 (Confidentiality).

8.23 Indemnification

The Contractor shall indemnify, defend and hold harmless the County, its Special Districts, elected and appointed officers, employees, agents and volunteers (County Indemnitees) from and against any and all liability, including but not limited to demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from and/or relating to Contractor's acts, failures, or omissions under this Contract, except for such loss or damage arising from the sole negligence or willful misconduct of the County indemnitees, and subject to the comparative negligence law of the state of California.

8.24 General Provisions for all Insurance Coverage

8.24.1 Without limiting Contractor's indemnification of County, and in the performance of this Contract and until all of its obligations pursuant to this Contract have been met, Contractor shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in Paragraphs 8.24 and 8.25 of this Contract. These minimum insurance coverage terms, types and limits (the "Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon Contractor pursuant to this Contract. The County in no way warrants that the Required Insurance is

sufficient to protect the Contractor for liabilities which may arise from or relate to this Contract.

8.24.2 Evidence of Coverage and Notice to County

- 8.24.2.1 Certificate(s) of insurance coverage (Certificate) satisfactory to County, and a copy of an Additional Insured endorsement confirming County and its Agents (defined below) has been given Insured status under the Contractor's General Liability policy, shall be delivered to County at the address shown below and provided prior to commencing services under this Contract.
- 8.24.2.2 Renewal Certificates shall be provided to County not less than ten (10) days prior to contractor's policy expiration dates. The County reserves the right to obtain complete, certified copies of any required contractor and/or sub-contractor insurance policies at any time.
- 8.24.2.3 Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Contract by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the contractor identified as the contracting party in this Contract. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand dollars (\$50,000), and list any County required endorsement forms.
- 8.24.2.4 Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the contractor, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

- 8.24.2.5 Certificates and copies of any required endorsements shall be sent to:

Contracts Monitor
 Department of Registrar-Recorder/County Clerk
 Contracts and Grants Section
 12400 Imperial Highway
 Room 5115
 Norwalk, CA 90650
contracts@rrcc.lacounty.gov

- 8.24.2.6 Contractor also shall promptly report to County any injury or property damage accident or incident, including any injury to a contractor employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to contractor. Contractor also shall promptly notify County of any third party claim or suit filed against contractor or any of its subcontractors which arises from or relates to this Contract and could result in the filing of a claim or lawsuit against contractor and/or County.

8.24.3 **Additional Insured Status and Scope of Coverage**

The County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, employees and volunteers (collectively County and its Agents) shall be provided additional insured status under contractor's General Liability policy with respect to liability arising out of contractor's ongoing and completed operations performed on behalf of the County. County and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of the contractor's acts or omissions, whether such liability is attributable to the contractor or to the County. The full policy limits and scope of protection also shall apply to the County and its Agents as an additional insured, even if they exceed the County's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

8.24.4 **Cancellation of or Changes in Insurance**

Contractor shall provide County with, or contractor's insurance policies shall contain a provision that County shall receive, written notice of cancellation or any change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period. The written notice shall be provided

to County at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance for any other cancellation or policy change. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of the Contract, in the sole discretion of the County, upon which the County may suspend or terminate this Contract.

8.24.5 Failure to Maintain Insurance

Contractor's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Contract, upon which County immediately may withhold payments due to contractor, and/or suspend or terminate this Contract. County, at its sole discretion, may obtain damages from contractor resulting from said breach. Alternatively, the County may purchase the Required Insurance, and without further notice to contractor, deduct the premium cost from sums due to contractor or pursue contractor reimbursement.

8.24.6 Insurer Financial Ratings

Coverage shall be placed with insurers acceptable to the County with A.M. Best ratings of not less than A:VII unless otherwise approved by County.

8.24.7 Contractor's Insurance Shall Be Primary

Contractor's insurance policies, with respect to any claims related to this Contract, shall be primary with respect to all other sources of coverage available to contractor. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any contractor coverage.

8.24.8 Waivers of Subrogation

To the fullest extent permitted by law, the contractor hereby waives its rights and its insurer(s)' rights of recovery against County under all the Required Insurance for any loss arising from or relating to this Contract. The contractor shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

8.24.9 Subcontractor Insurance Coverage Requirements

Contractor shall include all subcontractors as insureds under contractor's own policies, or shall provide County with each subcontractor's separate evidence of insurance coverage.

Contractor shall be responsible for verifying each subcontractor complies with the Required Insurance provisions herein, and shall require that each subcontractor name the County and contractor as additional insureds on the subcontractor's General Liability policy. Contractor shall obtain County's prior review and approval of any subcontractor request for modification of the Required Insurance.

8.24.10 Deductibles and Self-Insured Retentions (SIRs)

Contractor's policies shall not obligate the County to pay any portion of any contractor deductible or SIR. The County retains the right to require contractor to reduce or eliminate policy deductibles and SIRs as respects the County, or to provide a bond guaranteeing contractor's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

8.24.11 Claims Made Coverage

If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this Contract. Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.

8.24.12 Application of Excess Liability Coverage

Contractors may use a combination of primary and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

8.24.13 Separation of Insureds

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

8.24.14 Alternative Risk Financing Programs

The County reserves the right to review, and then approve, Contractor use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. The

County and its Agents shall be designated as an Additional Covered Party under any approved program.

8.24.15 **County Review and Approval of Insurance Requirements**

The County reserves the right to review and adjust the Required Insurance provisions, conditioned upon County's determination of changes in risk exposures.

8.25 **Insurance Coverage**

- 8.25.1 **Commercial General Liability** insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming County and its Agents as an additional insured, with limits of not less than:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate:	\$1 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$1 million

- 8.25.2 **Automobile Liability** insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of contractor's use of autos pursuant to this Contract, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

- 8.25.3 **Workers Compensation and Employers' Liability** insurance or qualified self- insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1 million per accident. If Contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as the Alternate Employer. The written notice shall be provided to County at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance for any other cancellation or policy change. If applicable to Contractor's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

8.25.4 Unique Insurance Coverage

8.25.4.1 Professional Liability-Errors and Omissions

Insurance covering Contractor's liability arising from or related to this Contract, with limits of not less than \$1 million per claim and \$2 million aggregate. Further, Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.

8.25.4.2 Technology Errors & Omissions Insurance

Insurance for liabilities arising from errors, omissions, or negligent acts in rendering or failing to render computer or information technology services and technology products. Coverage for violation of software copyright should be included. Technology services should at a minimum include (1) systems analysis; (2) systems programming; (3) data processing; (4) systems integration; (5) outsourcing including outsourcing development and design; (6) systems design, consulting, development and modification; (7) training services relating to computer software or hardware; (8) management, repair and maintenance of computer products, networks and systems; (9) marketing, selling, servicing, distributing, installing and maintaining computer hardware or software; (10) data entry, modification, verification, maintenance, storage, retrieval or preparation of data output, and any other services provided by the vendor with limits of not less than \$10 million.

8.25.4.3 Privacy/Network Security (Cyber) Liability

Insurance coverage providing protection against liability for (1) privacy breaches [liability arising from the loss or disclosure of confidential information no matter how it occurs]; (2) system breach; (3) denial or loss of service; (4) introduction, implantation, or spread of malicious software code; (5) unauthorized access to or use of computer systems with limits of not less than \$2 million. No exclusion/restriction for unencrypted portable devices/media may be on the policy.

8.26 Liquidated Damages

- 8.26.1 If, in the judgment of the RR/CC or designee, the Contractor is deemed to be non-compliant with the terms and obligations assumed hereby, the RR/CC, or his/her designee, at his/her option, in addition to, or in lieu of, other remedies provided herein, may withhold the entire monthly payment or deduct pro rata from the Contractor's invoice for work not performed. A description of the work not performed and the amount to be withheld or deducted from payments to the contractor from the County, will be forwarded to the Contractor by the RR/CC, or his/her designee, in a written notice describing the reasons for said action.
- 8.26.2 If the RR/CC or designee determines that there are material deficiencies in the performance of this Contract that the RR/CC, or designee, deems are correctable by the Contractor over a certain time span, the RR/CC, or designee, will provide a written notice to the Contractor to correct the deficiency within specified time frames. Should the Contractor fail to correct deficiencies within said time frame, the RR/CC or designee, may: (a) Deduct from the Contractor's payment, pro rata, those applicable portions of the Monthly Contract Sum; and/or (b) Deduct liquidated damages. The parties agree that it will be impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of the contractor to correct a deficiency within the specified time frame. The parties hereby agree that under the current circumstances a reasonable estimate of such damages is five thousand dollars (\$5,000) per day per infraction up to a maximum cumulative amount of two hundred thousand (\$200,000) for all assessments of liquidated damages during the Contract term), and/or as specified in the Exhibit 3 (Performance Requirements Summary (PRS)) Chart Appendix A (Statement of Work Exhibits) hereunder, and that Contractor shall be liable to the County for liquidated damages in said amount. Said amount shall be deducted from the County's payment to Contractor; and/or (c) Upon giving five (5) days' notice to Contractor for failure to correct the deficiencies, the County may correct any and all deficiencies and the total costs incurred by the County for completion of the work by an alternate source, whether it be County forces or separate private contractor, will be deducted and forfeited from the payment to Contractor from the County, as determined by the County.
- 8.26.3 The action noted in Paragraph 8.26.2 shall not be construed as a penalty, but as adjustment of payment to Contractor to recover the County cost due to the failure of Contractor to complete or comply with the provisions of this Contract.

- 8.26.4 This Paragraph shall not, in any manner, restrict or limit either party's right to damages for any breach of this Contract provided by law or as specified in the PRS or Paragraph 8.26.2, and shall not, in any manner, restrict or limit either party's right to terminate this Contract as agreed to herein.

8.27 Most Favored Public Entity

If Contractor's prices decline or should the contractor at any time during the term of this Contract provide the same goods or services under similar quantity and delivery conditions to the State of California or any county, municipality, or district of the State at prices below those set forth in this Contract, then such lower prices shall be immediately extended to the County.

8.28 Nondiscrimination and Affirmative Action

- 8.28.1 Contractor certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and shall be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.
- 8.28.2 Contractor shall certify to, and comply with, the provisions of Appendix C (Contractor's EEO Certification).
- 8.28.3 Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 8.28.4 Contractor certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation.
- 8.28.5 Contractor certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political

affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract.

8.28.6 Contractor shall allow County representatives access to Contractor's employment records during regular business hours to verify compliance with the provisions of this Paragraph 8.28 (Nondiscrimination and Affirmative Action) when so requested by the County.

8.28.7 If the County finds that any provisions of this Paragraph 8.28 (Nondiscrimination and Affirmative Action) have been violated, such violation shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract. While the County reserves the right to determine independently that the anti-discrimination provisions of this Contract have been violated, in addition, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that Contractor has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by the County that Contractor has violated the anti-discrimination provisions of this Contract.

8.28.8 The parties agree that in the event Contractor violates any of the anti-discrimination provisions of this Contract, the County shall, at its sole option, be entitled to the sum of five hundred dollars (\$500) for each such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Contract.

8.29 Non-Exclusivity

Nothing herein is intended nor shall be construed as creating any exclusive arrangement with Contractor. This Contract shall not restrict County from acquiring similar, equal or like goods and/or services from other entities or sources.

8.30 Notice of Delays

Except as otherwise provided under this Contract, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party shall, within one (1) business day, give notice thereof, including all relevant information with respect thereto, to the other party.

8.31 Notice of Disputes

Subject to Section 8.21, Contractor shall bring to the attention of the County's Project Manager and/or County's Project Director any dispute

between the County and Contractor regarding the performance of services as stated in this Contract. If the County's Project Manager or County's Project Director is not able to resolve the dispute, the RR/CC or designee shall resolve it.

8.32 Notice to Employees Regarding the Federal Earned Income Credit

Contractor shall notify its employees, and shall require each subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015.

8.33 Notice to Employees Regarding the Safely Surrendered Baby Law

Contractor shall notify and provide to its employees and shall require each subcontractor to notify and provide to its employees, information regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The information is set forth in Appendix H (Safely Surrendered Baby Law) of this Contract. Additional information is available at www.babysafela.org.

8.34 Notices

All notices or demands required or permitted to be given or made under this Contract shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the parties as identified in Appendices E (County's Administration) and F (Contractor's Administration). Addresses may be changed by either party giving ten (10) days prior written notice thereof to the other party. The RR/CC or designee shall have the authority to issue all notices or demands required or permitted by the County under this Contract.

8.35 Prohibition Against Inducement or Persuasion

Notwithstanding the above, Contractor and the County agree that, during the term of this Contract and for a period of one year thereafter, neither party shall in any way intentionally induce or persuade any employee of one party to become an employee or agent of the other party. No bar exists against any hiring action initiated through a public announcement.

8.36 Public Records Act

8.36.1 Any documents submitted by Contractor; all information obtained in connection with the County's right to audit and inspect Contractor's documents, books, and accounting records pursuant to Paragraph 8.38 (Record Retention and Inspection-Audit Settlement) of this Contract; as well as those documents

which were required to be submitted in response to the Request for Proposals (RFP) used in the solicitation process for this Contract, become the exclusive property of the County. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary". The County shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.

- 8.36.2 In the event the County is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret", "confidential", or "proprietary", Contractor agrees to defend and indemnify the County from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

8.37 Publicity

- 8.37.1 Contractor shall not disclose any details in connection with this Contract to any person or entity except as may be otherwise provided hereunder or required by law. However, in recognizing Contractor's need to identify its services and related clients to sustain itself, the County shall not inhibit Contractor from publishing its role under this Contract within the following conditions:
- 8.37.1.1 Contractor shall develop all publicity material in a professional manner; and
 - 8.37.1.2 During the term of this Contract, Contractor shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of the County without the prior written consent of the County's Project Director. The County shall not unreasonably withhold written consent.
- 8.37.2 Contractor may, without the prior written consent of County, indicate in its proposals and sales materials that it has been awarded this Contract with the County of Los Angeles, provided that the requirements of this Paragraph 8.37 (Publicity) shall apply.

8.38 Record Retention and Inspection-Audit Settlement

- 8.38.1 Contractor shall maintain accurate and complete financial records of its activities and operations relating to this Contract in accordance with generally accepted accounting principles. Contractor shall also maintain accurate and complete employment and other records relating to its performance of this Contract. Contractor agrees that the County, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Contract. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by Contractor and shall be made available to the County during the term of this Contract and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by Contractor at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at the County's option, Contractor shall pay the County for travel, per diem, and other costs incurred by the County to examine, audit, excerpt, copy, or transcribe such material at such other location.
- 8.38.2 In the event that an audit of Contractor is conducted specifically regarding this Contract by any Federal or State auditor, or by any auditor or accountant employed by Contractor or otherwise, then Contractor shall file a copy of such audit report with the County's Auditor-Controller within thirty (30) days of Contractor's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Contract. Subject to applicable law, the County shall make a reasonable effort to maintain the confidentiality of such audit report(s).
- 8.38.3 Failure on the part of Contractor to comply with any of the provisions of this subparagraph 8.38 shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract.
- 8.38.3 If, at any time during the term of this Contract or within five (5) years after the expiration or termination of this Contract, representatives of the County conduct an audit of Contractor regarding the work performed under this Contract, and if such audit finds that the County's dollar liability for any such work is less than payments made by the County to Contractor, then the difference shall be either: a) repaid by Contractor to the County by cash payment upon demand or b) at the sole option of the County's Auditor-Controller, deducted from any amounts due to

Contractor from the County, whether under this Contract or otherwise. If such audit finds that the County's dollar liability for such work is more than the payments made by the County to Contractor, then the difference shall be paid to Contractor by the County by cash payment, provided that in no event shall the County's maximum obligation for this Contract exceed the funds appropriated by the County for the purpose of this Contract.

8.39 Recycled Bond Paper

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the contractor agrees to use recycled-content paper to the maximum extent possible on this Contract.

8.40 Subcontracting

8.40.1 The requirements of this Contract may not be subcontracted by Contractor without the advance written approval of the County. Any attempt by Contractor to subcontract without the prior consent of the County may be deemed a material breach of this Contract.

8.40.2 If Contractor desires to subcontract, Contractor shall provide the following information promptly at the County's request:

8.40.2.1 A description of the work to be performed by the subcontractor;

8.40.2.2 A draft copy of the proposed subcontract; and

8.40.2.3 Other pertinent information and/or certifications requested by the County.

8.40.3 Contractor shall indemnify, defend, and hold the County harmless with respect to the activities of each and every subcontractor in the same manner and to the same degree as if such subcontractor(s) were Contractor employees.

8.40.4 Contractor shall remain fully responsible for all performances required of it under this Contract, including those that Contractor has determined to subcontract, notwithstanding the County's approval of Contractor's proposed subcontract.

8.40.5 The County's consent to subcontract shall not waive the County's right to prior and continuing approval of any and all personnel, including subcontractor employees, providing services under this Contract. Contractor is responsible to notify its subcontractors of this County right.

- 8.40.6 The County's Project Director is authorized to act for and on behalf of the County with respect to approval of any subcontract and subcontractor employees. After approval of the subcontract by the County, contractor shall forward a fully executed subcontract to the County for their files.
- 8.40.7 Contractor shall be solely liable and responsible for all payments or other compensation to all subcontractors and their officers, employees, agents, and successors in interest arising through services performed hereunder, notwithstanding the County's consent to subcontract.
- 8.40.8 Contractor shall obtain certificates of insurance, which establish that the subcontractor maintains all the programs of insurance required by the County from each approved subcontractor. Before any subcontractor employee may perform any work hereunder, contractor shall ensure delivery of all such documents to:

Contracts Monitor
 Department of Registrar-Recorder/County Clerk
 12400 Imperial Highway
 Contracts Section
 Suite 5115
 Norwalk, California 90650
contracts@rrcc.lacounty.gov

8.41 Termination for Breach of Warranty to Maintain Compliance with County's Child Support Compliance Program

Failure of Contractor to maintain compliance with the requirements set forth in Paragraph 8.14 (Contractor's Warranty of Adherence to County's Child Support Compliance Program) shall constitute default under this Contract. Without limiting the rights and remedies available to the County under any other provision of this Contract, failure of Contractor to cure such default within ninety (90) calendar days of written notice shall be grounds upon which the County may terminate this Contract pursuant to Paragraph 8.43 (Termination for Default) and pursue debarment of Contractor, pursuant to County Code Chapter 2.202.

8.42 Termination for Convenience

- 8.42.1 This Contract may be terminated, in whole or in part, from time to time, when such action is deemed by the County, in its sole discretion, to be in its best interest. Such termination may be effective no sooner than six (6) months after the effective date of the Contract. Termination of work hereunder shall be effected by notice of termination to Contractor specifying the extent to which performance of work is terminated and the date upon

which such termination becomes effective. The date upon which such termination becomes effective shall be no less than fifteen (15) days after the notice is sent.

8.42.2 After receipt of a notice of termination and except as otherwise directed by the County, Contractor shall:

8.42.2.1 Stop work under this Contract on the date and to the extent specified in such notice, and

8.42.2.2 Complete performance of such part of the work as shall not have been terminated by such notice.

8.42.2.3 Contractor shall be paid for all work performed through the effective date of termination.

8.42.3 All material including books, records, documents, or other evidence bearing on the costs and expenses of Contractor under this Contract shall be maintained by the contractor in accordance with Paragraph 8.38 (Record Retention and Inspection-Audit Settlement).

8.43 Termination for Default

8.43.1 The County may, by written notice to Contractor, terminate the whole or any part of this Contract, if, in the judgment of County's Project Director:

8.43.1.1 Contractor has materially breached this Contract; or

8.43.1.2 Contractor fails to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required either under this Contract; or

8.43.1.3 Contractor fails to demonstrate a high probability of timely fulfillment of performance requirements under this Contract, or of any obligations of this Contract and in either case, fails to demonstrate convincing progress toward a cure within five (5) working days (or such longer period as the County may authorize in writing) after receipt of written notice from the County specifying such failure.

8.43.2 In the event that the County terminates this Contract in whole or in part as provided in Paragraph 8.43.1, the County may procure, upon such terms and in such manner as the County may deem appropriate, goods and services similar to those so terminated. Contractor shall be liable to the County for any and all excess costs incurred by the County, as determined by the County, for such similar goods and services. Contractor shall continue the

performance of this Contract to the extent not terminated under the provisions of this paragraph.

- 8.43.3 Except with respect to defaults of any subcontractor, Contractor shall not be liable for any such excess costs of the type identified in Paragraph 8.43.2 if its failure to perform this Contract arises out of causes beyond the control and without the fault or negligence of Contractor. Such causes may include, but are not limited to: acts of God or of the public enemy, acts of the County in either its sovereign or contractual capacity, acts of Federal or State governments in their sovereign capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both Contractor and subcontractor, and without the fault or negligence of either of them, Contractor shall not be liable for any such excess costs for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule. As used in this paragraph, the term "subcontractor(s)" means subcontractor(s) at any tier.
- 8.43.4 If, after the County has given notice of termination under the provisions of Paragraph 8.43 (Termination for Default) it is determined by the County that Contractor was not in default under the provisions of Paragraph 8.43 (Termination for Default) or that the default was excusable under the provisions of subparagraph 8.43.3, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Paragraph 8.42 (Termination for Convenience).
- 8.43.5 The rights and remedies of the County provided in this Paragraph 8.43 (Termination for Default) shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

8.44 Termination for Improper Consideration

- 8.44.1 The County may, by written notice to Contractor, immediately terminate the right of Contractor to proceed under this Contract if it is found that consideration, in any form, was offered or given by Contractor, either directly or through an intermediary, to any County officer, employee, or agent with the intent of securing this Contract or securing favorable treatment with respect to the award, amendment, or extension of this Contract or the making of any determinations with respect to Contractor's performance

pursuant to this Contract. In the event of such termination, the County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.

- 8.44.2 Contractor shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (800) 544-6861.
- 8.44.3 Among other items, such improper consideration may take the form of cash, discounts, services, the provision of travel or entertainment, or tangible gifts.

8.45 Termination for Insolvency

- 8.45.1 The County may terminate this Contract forthwith in the event of the occurrence of any of the following:
 - 8.45.1.1 Insolvency of Contractor. Contractor shall be deemed to be insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not Contractor is insolvent within the meaning of the Federal Bankruptcy Code;
 - 8.45.1.2 The filing of a voluntary or involuntary petition regarding Contractor under the Federal Bankruptcy Code;
 - 8.45.1.3 The appointment of a Receiver or Trustee for Contractor; or
 - 8.45.1.4 The execution by Contractor of a general assignment for the benefit of creditors.
- 8.45.2 The rights and remedies of the County provided in this Paragraph 8.45 (Termination for Insolvency) shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

8.46 Termination for Non-Adherence of County Lobbyist Ordinance

Contractor, and each County Lobbyist or County Lobbying firm as defined in County Code Section 2.160.010 retained by Contractor, shall fully comply with the County's Lobbyist Ordinance, County Code Chapter 2.160. Failure on the part of Contractor or any County Lobbyist or County Lobbying firm retained by Contractor to fully comply with the County's

Lobbyist Ordinance shall constitute a material breach of this Contract, upon which the County may in its sole discretion, immediately terminate or suspend this Contract.

8.47 Termination for Non-Appropriation of Funds

Notwithstanding any other provision of this Contract, the County shall not be obligated for Contractor's performance hereunder or by any provision of this Contract during any of the County's future fiscal years unless and until the County's Board of Supervisors appropriates funds for this Contract in the County's Budget for each such future fiscal year. In the event that funds are not appropriated for this Contract, then this Contract shall terminate as of June 30 of the last fiscal year for which funds were appropriated. The County shall notify Contractor in writing of any such non-allocation of funds at the earliest possible date.

8.48 Validity

If any provision of this Contract or the application thereof to any person or circumstance is held invalid, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby.

8.49 Waiver

No waiver by the County of any breach of any provision of this Contract shall constitute a waiver of any other breach or of such provision. Failure of the County to enforce at any time, or from time to time, any provision of this Contract shall not be construed as a waiver thereof. The rights and remedies set forth in this paragraph 8.49 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

8.50 Warranty Against Contingent Fees

8.50.1 Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any Contract or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business.

8.50.2 For breach of this warranty, the County shall have the right to terminate this Contract and, at its sole discretion, deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

8.51 Warranty of Compliance with County's Defaulted Property Tax Reduction Program

Contractor acknowledges that County has established a goal of ensuring that all individuals and businesses that benefit financially from County through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

Unless contractor qualifies for an exemption or exclusion, contractor warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this contract will maintain compliance, with Los Angeles County Code Chapter 2.206.

8.52 Termination for Breach of Warranty to Maintain Compliance with County's Defaulted Property Tax Reduction Program

Failure of contractor to maintain compliance with the requirements set forth in Paragraph 8.51 (Warranty of Compliance with County's Defaulted Property Tax Reduction Program) shall constitute default under this contract. Without limiting the rights and remedies available to County under any other provision of this contract, failure of contractor to cure such default within ten (10) days of notice shall be grounds upon which County may terminate this contract and/or pursue debarment of contractor, pursuant to County Code Chapter 2.206.

8.53 Time Off for Voting

Contractor shall notify its employees, and shall require each subcontractor to notify and provide to its employees, information regarding the time off for voting law (Elections Code Section 14000). Not less than ten (10) days before every statewide election, every contractor and subcontractors shall keep posted conspicuously at the place of work, if practicable, or elsewhere where it can be seen as employees come or go to their place of work, a notice setting forth the provisions of Section 14000.

8.54 Compliance with County's Zero Tolerance Policy on Human Trafficking

Contractor acknowledges that the County has established a Zero Tolerance Policy on Human Trafficking prohibiting contractors from engaging in human trafficking.

If a Contractor or member of Contractor's staff is convicted of a human trafficking offense, the County shall require that Contractor or member of Contractor's staff be removed immediately from performing services under the Contract. County will not be under any obligation to disclose confidential information regarding the offenses other than those required by law.

Disqualification of any member of Contractor's staff pursuant to this paragraph shall not relieve Contractor of its obligation to complete all work in accordance with the terms and conditions of this Contract.

8.55 Intentionally Omitted

8.56 Compliance with Fair Chance Employment Practices

Contractor shall comply with fair chance employment hiring practices set forth in California Government Code Section 12952, Employment Discrimination: Conviction History. Contractor's violation of this paragraph of the Contract may constitute a material breach of the Contract. In the event of such material breach, County may, in its sole discretion, terminate the Contract.

8.57 Compliance with the County Policy of Equity

Contractor acknowledges that the County takes its commitment to preserving the dignity and professionalism of the workplace very seriously, as set forth in the County Policy of Equity (CPOE) (<https://ceop.lacounty.gov/>). Contractor further acknowledges that the County strives to provide a workplace free from discrimination, harassment, retaliation and inappropriate conduct based on a protected characteristic, and which may violate the CPOE. Contractor, its employees and subcontractors acknowledge and certify receipt and understanding of the CPOE. Failure of Contractor, its employees or its subcontractors to uphold the County's expectations of a workplace free from harassment and discrimination, including inappropriate conduct based on a protected characteristic, may subject Contractor to termination of contractual contracts as well as civil liability.

8.58 Prohibition from Participation in Future Solicitation(s)

A Proposer, or a Contractor or its subsidiary or Subcontractor ("Proposer/Contractor"), is prohibited from submitting a bid or proposal in a County solicitation if the Proposer/Contractor has provided advice or consultation for the solicitation. A Proposer/Contractor is also prohibited from submitting a bid or proposal in a County solicitation if the Proposer/Contractor has developed or prepared any of the solicitation materials on behalf of the County. A violation of this provision shall result in the disqualification of the Contractor/Proposer from participation in the County solicitation or the termination or cancellation of any resultant County contract. This provision shall survive the expiration, or other termination of this Agreement.

9 UNIQUE TERMS AND CONDITIONS

9.1 Ownership of Materials, Software and Copyright

- 9.1.1 Contractor will provide the County with a non-exclusive, paid-up, royalty-free, non-transferable, non-assignable license in any copyright, in and to all Components of the system solution, Software Upgrades (i.e., County requested Customizations, Solution Modifications, and Software Enhancements), plans, diagrams, facilities, and tools and Documentation (hereafter "materials") which are originated or created through the Contractor's work pursuant to this Contract or any other prior or other current agreements with County relating to the Project for the term of the Contract. For avoidance of doubt, Contractor is the sole owner of all right, title, and interest in its preexisting DIMS product as commercially available, including any copyright, patent, trade secret, and know-how rights therein as well as any Software Upgrades to the preexisting DIMS product. Notwithstanding anything herein which maybe read to the contrary, Contractor's rights to enhance, modify and update the DIMS product, and all know-how rights therein shall not be abridged, reduced or otherwise affected by this contract.
- 9.1.2 During the term of this Contract and for five (5) years thereafter, the Contractor shall maintain and provide security for all of the Contractor's working papers prepared under this Contract. County shall have the right to inspect, copy and use at any time during and subsequent to the term of this Contract, any and all such working papers and all information contained therein.
- 9.1.3 Any and all materials, software and tools which are developed or were originally acquired by the Contractor outside the scope of this Contract, which the Contractor desires to use hereunder, and which the Contractor considers to be proprietary or confidential, must be specifically identified by the Contractor to the County's Project Manager as proprietary or confidential, and shall be plainly and prominently marked by the Contractor as "Proprietary" or "Confidential" on each appropriate page of any document containing such material. For avoidance of doubt, Contractor retains its pre-existing right, title and interest in the commercially available version of its base DIMS product and need not mark the DIMS base software as "Proprietary" or "Confidential."
- 9.1.4 The County will use reasonable means to ensure that the Contractor's proprietary and/or confidential items are safeguarded and held in confidence. The County agrees not to reproduce, distribute or disclose to non-County entities any such proprietary and/or confidential items without the prior

written consent of the Contractor except as might be required by applicable law or regulation. Notwithstanding the foregoing, Contractor hereby consents to AT&T, AWS, and Cherwell accessing Contractor data dictionaries for purpose of creating Interfaces and for authorized State election officials to access the County's instance of Contractor's System Software.

- 9.1.5 Notwithstanding any other provision of this Contract, the County will not be obligated to the Contractor in any way under subparagraph 9.1.4 for any of the Contractor's proprietary and/or confidential items which are not plainly and prominently marked with restrictive legends as required by subparagraph 9.1.3 or for any disclosure which the County is required to make under any state or federal law or order of court.
- 9.1.6 All the rights and obligations of this Paragraph 9.1 shall survive the expiration or termination of this Contract.

9.2 Patent, Copyright and Trade Secret Indemnification

- 9.2.1 The Contractor shall indemnify, hold harmless and defend County from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorneys' fees, for or by reason of any actual or alleged infringement of any third party's patent or copyright, or any actual or alleged unauthorized trade secret disclosure, arising from or related to the operation and utilization of the Contractor's work under this Contract. County shall inform the Contractor as soon as practicable of any claim or action alleging such infringement or unauthorized disclosure and shall support the Contractor's defense and settlement thereof.
- 9.2.2 In the event any equipment, part thereof, or software product becomes the subject of any complaint, claim, or proceeding alleging infringement or unauthorized disclosure, such that County's continued use of such item is formally restrained, enjoined, or subjected to a risk of damages, the Contractor, at its sole expense, and providing that County's continued use of the system is not materially impeded, shall either:
- Procure for County all rights to continued use of the questioned equipment, part, or software product; or
 - Replace the questioned equipment, part, or software product with a County-approved non-questioned item; or
 - Modify the questioned equipment, part, or software in a County-approved manner so that it is free of claims, such approval not to be unreasonable withheld.

- 9.2.3 The Contractor shall have no liability if the alleged infringement or unauthorized disclosure is based upon a use of the questioned product, either alone or in combination with other items not supplied by the Contractor, in a manner for which the questioned product was not designed nor intended.

10. SYSTEM OWNERSHIP AND LICENSE

10.1 SYSTEM OWNERSHIP

10.1.1 SYSTEM ENVIRONMENT

Contractor acknowledges that County owns all System Environment Components provided by County, including County Hardware; while Contractor, or the rightful owner, shall retain ownership of all System Environment Components provided by Contractor.

10.1.2 SYSTEM DATA

All County Data provided or made accessible by County to Contractor, is and shall remain the property of County. All System Data, expressly excluding County Data, provided by Contractor for the purpose of this Contract, is and shall remain the property of Contractor or any rightful third-party owner. This requirement supplements but does not replace the requirements of Appendix K (Information Security Requirements).

10.2 LICENSE

10.2.1 LICENSE GRANT

Subject to Paragraphs 9.1 (Ownership of Materials, Software and Copyright) and 10.1 (System Ownership), Contractor hereby grants to County a non-exclusive, paid-up, royalty-free, non-transferable, non-assignable license to make full use and enjoyment of the products, services, Software Upgrades (i.e., County requested Customizations, Solution Modifications, and Software Enhancements), deliverables, including the System Software and Documentation as provided by Contractor under this or any other related agreement between the parties related to this Project for the term of the License described in Paragraph 10.2.2 (License Term) by all Users in accordance with the scope set forth in Paragraph 10.2.3 (Scope of License). Contractor shall also secure and convey a license of equivalent scope for the County to any necessary Third-Party Software provided by Contractor to fulfill its requirements hereunder. Notwithstanding the foregoing, upon mutual agreement of the parties, County may obtain its own license for any Component of Third-Party Software, the term and scope of which shall be subject to the terms of County's agreement with the provider of such Third-

Party Software. County can't access the source code unless the Release Events are met or as otherwise provided in the Source Code Escrow Appendix I (Source Code Escrow Contract).

10.2.2 LICENSE TERM

The License granted under this Contract shall commence upon the Effective Date and shall continue through the term of this Contract.

10.2.3 SCOPE OF LICENSE

For avoidance of doubt and without limitation of the grant provided under Paragraph 10.2.1, the License granted by Contractor under this Contract provides County with the following rights:

1. To use, install, integrate with other software, operate and execute during the term of the Contract, the System Software in the System Environment on an unlimited number of computers, servers, local area networks and wide area networks, including web connections and by an unlimited number of Users in the conduct of the business of County within the scope of the project under the Contract.
2. To use, modify, copy, translate and compile the Application Software after such time as one of the Release Conditions described in Paragraph 10.3.1 (Source Code Escrow Contract) has occurred which would permit County to use the Source Code as provided in this Paragraph 10.2 and Paragraph 10.3 (Source Code) below;
3. To use, modify, copy and display the Documentation as provided by Contractor, including, but not limited to, System and User manuals, as necessary or appropriate for County to enjoy and exercise fully the rights granted under this Contract and the License;
4. To permit third party access to the Application Software, the Documentation, or any part thereof, as necessary or appropriate for County to enjoy and exercise fully the rights granted under this Agreement and the License, including for the provision of System Maintenance Services, Application Modifications, Professional Services or other business use or support of the Application Software as contemplated by this Agreement; provided, however, without limiting County's rights under this Paragraph 10.2.3, County covenants and agrees that it shall not exercise any of the rights contained in this Paragraph 10.2.3(4) unless and until the occurrence of any one of the Release Conditions;

5. To reproduce and use a reasonable number of copies of the System Software provided by Contractor by County and permitted assignees, for archive and backup purposes;
6. During the term of the Contract, to use and test System Software, and specifically the Application Software, in the Test Environment, including for the purpose of building its own solutions or models, as mutually agreed to by the parties.
7. County will not remove, alter, or obscure any Contractor disclaimer notices, trademarks, copyright notices, or other ownership marks, if any, appearing in the Application Software or any of its screens.
8. County will not reverse engineer, reverse compile, decompile, or disassemble Contractor's Application Software object code.
9. County will not knowingly allow access to or permit the use of the Application Software for other than its intended lawful purpose.

10.3 SOURCE CODE

10.3.1 Source Code Escrow Contract

Contractor shall maintain a Deposit Account Agreement for Escrow Material substantially similar to Appendix I (Source Code Escrow Contract) with a nationally recognized source code escrow provider for the duration of this Contract that provides the County rights and access as provided in that Appendix I (Source Code Escrow Contract) upon occurrence of any Release Event.

IN WITNESS WHEREOF, Contractor has executed this Contract, or caused it to be duly executed and the County of Los Angeles, by order of its Board of Supervisors has caused this Contract to be executed on its behalf by the Chair of said Board and attested by the Executive Officer-Clerk of the Board of Supervisors thereof, the day and year first above written.

COUNTY OF LOS ANGELES

RUNBECK ELECTION SERVICES,
INC.

DEAN C. LOGAN
Registrar-Recorder/County Clerk

Name

Title

Tax Identification Number

APPROVED AS TO FORM:

MARY C. WICKHAM
County Counsel

By _____
Deputy County Counsel

APPENDICES

- A STATEMENT OF WORK
- B PRICING SCHEDULE
- C CONTRACTOR'S EEO CERTIFICATION
- D COUNTY'S ADMINISTRATION
- E CONTRACTOR'S ADMINISTRATION
- F CONTRACTOR ACKNOWLEDGEMENT AND CONFIDENTIALITY AGREEMENT
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APPENDIX A

STATEMENT OF WORK

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1.0 PURPOSE AND BACKGROUND

1.1 PURPOSE

This Statement of Work (SOW) defines the work to be delivered by Contractor to County of Los Angeles (County) under the Contract. This document also incorporates by reference all Contractor obligations set forth in the body of the Contract. Capitalized terms used in this SOW shall have the meanings set forth in the body of the Contract, and if such terms are not defined in the Contract, they shall have the meaning set forth in this SOW.

Contractor shall provide Voter Information Management System (DIMS or System) Software, Interfaces, and related support and maintenance services to accomplish all of the Tasks and subtasks set forth in the Contract and in this SOW. Such services shall include the following:

- 1) Provide remote support and maintenance services for DIMS.
- 2) Develop, test, and implement software modifications and System enhancements to comply with legal requirements.
- 3) Provide existing Interfaces to systems identified by County to automate and facilitate information exchange, including, but not limited to a new Electronic Pollbook (E-Pollbook)/roster solution for real-time access to DIMS and/or VoteCal.
- 4) Provide professional consulting on technical subjects including, but not limited to, scripts, queries, application code, or technical infrastructure related to the DIMS Software.
- 5) Conduct training remotely at a mutually agreed upon date and time for database administration staff and end user whenever County requests such training.
- 6) Develop, where appropriate, both database-administration and end-user documentation whenever a new feature or function is implemented.
- 7) All deliverables shall have Finalized Requirements provided by the County. Scope, timeline, and pricing will be mutually agreed upon prior to the commencement of work.

The County is responsible for their environment within their own firewall including the accessibility to the application. All environment, infrastructure, hardware changes and other changes outside of the Contractors control are the sole responsibility of the County. If Contractor has to restore any application/product/service/connectivity that the County or Third-Party has changed, this will result in additional charges by the Contractor based on time and materials.

- Where regression automated test scripts are indicated throughout all documents, Contractor will provide, script and Documentation when available, upon request. When not available, County will provide Contractor with Finalized Requirements and Contractor will provide scope and quote based upon time and materials.

1.2 BACKGROUND

County is the nation's largest and most diverse election jurisdiction, serving over 8 million registered voters, providing assistance in ten (10) different languages and operating approximately 1,000 Vote Centers.

Specifically, the Department of Registrar-Recorder/County Clerk (Department) is responsible for the registration of voters, maintenance of voter files, precincting, vote by mail voting, petitions, and precinct officers/polls maintenance and the conduct of local, State, federal and special elections.

2.0 TASKS AND DELIVERABLES

TASK 1 – SUPPORT AND MAINTENANCE SERVICES

TASK 2 – SYSTEM INTERFACE PROGRAMMING AND EXECUTION

TASK 3 – EXTERNAL ACCESS PLAN AND CONFIGURATION

TASK 4 – CHANGE ORDER PROCESS

TASK 5 – ACCOUNT MANAGER

Contractor shall use the standard Department software set forth below when preparing Deliverables. Contractor shall provide Deliverables in a file format importable to the standard Department software. Department standard software is as follows:

- Microsoft Word 2013/2016 - Word Processing
- Microsoft Excel 2013/2016 - Spreadsheet
- Microsoft PowerPoint 2013/2016 - Project Presentations
- Visio Version 2013/2016 - Illustrations, Flowcharts, and Drawings
- Microsoft Project 2013/2016 - Project Manager
- Microsoft Teams 2016 – Project Team Meetings

TASK 1 - SUPPORT AND MAINTENANCE SERVICES

Subtask 1.1 – Core Application Software Upgrades

Contractor shall provide periodic updates or revisions to DIMS.net System Core Application Software. These updates or revisions may be the result of State or federal election code requirements. In addition, the County may also require changes to Core Application Software to meet internal needs.

Contractor is required to distribute a Release Notes Report for all DIMS.net System Core Application Software upgrades. The Release Notes Report must contain:

- a. The Contractor Internal Tracking Number
- b. The name of the module(s) impacted by the change
- c. A description of the functionality included in the release
- d. A copy of all new complete test case(s)/test script(s) that were executed for a specific release by the contractor to test the Interface(s). Regression automated test scripts, when available, will be provided upon request.

Subtask 1.1 Deliverable:

- 1.1.1 DIMS.net System Core Application Software Updates resulting from mandated California Election Code requirements as well as County's internal needs.
- 1.1.2 For each DIMS.net System Core Application Software upgrade, in addition to the Release Notes Report the Contractor shall provide a report that contains a complete list of all data flow and process logic diagrams, where available, and material to Contractor impacted, modified, deleted, or added in the upgrade no later than twenty-four (24) hours after the update is available to the County.
- 1.1.3 For each DIMS.net System Core Application Software upgrade, Contractor shall thoroughly test the readiness all new and existing impacted system screens, data flows, workflows, and exception processing, where applicable.
- 1.1.4 For each DIMS.net System Core Application Software upgrade, where mutually agreeable by the County and the Contractor, the Contractor shall provide training on all functional changes to the DIMS.net System screens, data flows, workflows, and exception processing where applicable.
- 1.1.5 For each DIMS.net System Core Application Software upgrade, Contractor shall provide the Release Notes Report and all associated test case(s)/test script(s) that were executed by the Contractor to test the Interface(s).
- 1.1.6 For each DIMS.net System Core Application Software upgrade release, Contractor shall provide remote support for installation of the DIMS.net System into County's test and production environments.

Subtask 1.2 – Help Desk Support

Contractor shall establish a Help Desk and an Issue Management tracking process to manage and track any technical problems, issues, failures, deficiencies, complaints, systems software bugs (collectively, "Problems") reported by County. Contractor shall also provide County with a telephone number to Help Desk staffed twenty-four (24) hours per day, seven (7) days a week upon request throughout the entirety of the Contract during Critical Election Periods. Otherwise, normal support hours will be from 7:00am–5:00pm Pacific Local Time Monday through Friday. Problems reported to the Help Desk and the Issue Management tracking process shall be categorized into severity levels and Contractor shall respond according to the severity level of the Problem. Problems reported to Contractor shall be updated to the Issue Management tracking process based on the response times defined by the Severity and Response Level of the incident. County shall make the determination of what severity level,

based on severity level definitions, to assign to each problem reported to the Help Desk. Contractor can follow the dispute resolution procedure if there is disagreement. The list below shows definition of each severity level and the level or response required from Contractor.

Severity Levels

Severity Level 1 – Critical: Widespread System unavailability – Production System is down; System is completely or functionally inoperable. Operations are severely impacted.

Severity Level 2 - Major: Problem that substantially degrades performance of any Application Software component or materially restricts business; restricts use of one or more modules or features of Application Software to perform necessary business functions, but not entire Application Software. Users can use Application Software; but an important function of it is not available; operations are significantly impacted.

Severity Level 3 - Minor: A problem that causes only a minor impact on the use of the Application Software. The problem can be easily circumvented. The problem can cause some functional restrictions, but it does not have a critical or severe impact on operations.

Response Level

Severity Level 1:

During Critical Election Periods, the County requires response within one (1) hour, twenty-four (24) hours per day, seven (7) days a week (including local, State, and federal holidays). The vendor shall provide County twenty-four (24) hours per day, seven (7) days a week support until a mutually agreed upon resolution date is determined. In the meantime, between the Severity level 1 incident and the mutually agreed upon resolution, excluding network, infrastructure and/or hardware controlled by the County, the Contractor shall provide a workaround solution or agreed resolution within thirty-six (36) hours. The Contractor and County will jointly monitor and discuss the effectiveness of the workaround and Contractor shall provide a weekly status report to the County. Failure to comply will result in an assessment of five thousand (\$5000) per incident.

During other periods, the County requires response within four (4) hours, twenty-four (24) hours per day, seven (7) days a week (including local, State, and federal holidays). The vendor shall provide County twenty-four (24) hours per day, seven (7) days a week support until a mutually agreed upon resolution date is determined. In the meantime, between the Severity level 1 incident and the mutually agreed upon resolution, excluding network, infrastructure and/or hardware controlled by the County, the Contractor shall provide a workaround solution or agreed resolution within two (2) days. The Contractor and County will jointly monitor and discuss the effectiveness of the workaround and provide a weekly status report to the County. Failure to comply will result in an assessment of one thousand (\$1000) per incident.

Severity Level 2:

During Critical Election Periods, the County requires response within four (4) hours, twenty-four (24) hours per day, seven (7) days a week (including local, State, and federal holidays). The vendor shall provide County twenty-four (24) hours per day, seven (7) days a week support until a mutually agreed upon resolution date is determined. In the meantime, between the Severity level 2 incident and the mutually agreed upon resolution, excluding network, infrastructure and/or hardware controlled by the County, the Contractor shall provide a workaround solution or agreed resolution within sixty (60) hours. The Contractor and County will jointly monitor and discuss the effectiveness of the workaround and provide a weekly status report to the County. Failure to comply will result in an assessment of one thousand (\$1000) per incident.

During other periods, the County requires response within eight (8) hours, ten (10) hours per day, five (5) days a week (Monday - Friday, 7 a.m. until 5 p.m. Pacific Time). The vendor shall provide County twenty-four (24) hours per day, seven (7) days a week support until a mutually agreed upon resolution date is determined. In the meantime, between the Severity level 2 incident and the mutually agreed upon resolution, excluding network, infrastructure and/or hardware controlled by the County, the Contractor shall provide a workaround solution or agreed resolution within five (5) days. The Contractor and County will jointly monitor and discuss the effectiveness of the workaround and provide a weekly status report to the County. Failure to comply will result in an assessment of five hundred (\$500) per incident.

Severity Level 3:

During all periods, the County requires response within five (5) days, ten (10) hours per day, five (5) days a week (Monday - Friday, 7 a.m. until 5 p.m. Pacific Time). Problems reported after business hours and weekends shall be processed the next business day. In the meantime, between the Severity level 3 incident and the mutually agreed upon resolution, within the Contractor's control, the Contractor shall provide a workaround solution or agreed resolution in a future release. The Contractor and County will jointly monitor and discuss the effectiveness of the workaround and provide a weekly status report to the County. Failure to comply will result in an assessment of one hundred (\$100) per incident.

Subtask 1.2 Deliverable:

1.2.1 A contact will be available twenty-four (24) hours a day, seven (7) days a week during Critical Election Periods. At any other time, a resource will be available during business hours of 7:00am-5:00pm Pacific Local Time. In addition, respond according to severity levels above.

Subtask 1.3 - Status Reports

Each Problem reported to Help Desk shall be documented and tracked by Contractor until it has been resolved. Contractor shall open a ticket within four (4) hours, unless Contractor is asked to address higher priority items. Help Desk Status Reports will contain the following information after it becomes available:

- a. The date problem was reported
- b. A description of the problem
- c. Severity level
- d. Status
- e. Staff person assigned to resolve problem
- f. Date problem resolved

County may request such reports at any time during normal business hours and for any period (by day, week, month, or year).

Subtask 1.3 Deliverable:

1.3.1 Help Desk Status Reports

Subtask 1.4 – Issue Management Tracking

Each Problem reported to Help Desk and/or Account Manager shall be documented and tracked by Contractor via an Issue Management Tracking process. The process should include all Change Orders and bugs reported and/or modifications planned by the contractor related to DIMS changes. These issues/bugs must be tracked with the current status of the issue/bug and must be provided to County for review on a bi-weekly basis. This tracking process must also provide a reporting mechanism to export the issues/bugs for County's management review with Operation teams.

Subtask 1.4 Deliverable:

- 1.4.1 Within three (3) months of Effective Date of the Contract, Contractor must establish an Issue Management Tracking process that provides the County access to DIMS issue report. This tracking process must also provide a reporting mechanism to export the issues/bugs for County's management review with Operation teams.

TASK 2 – SYSTEM INTERFACE PROGRAMMING AND EXECUTION

Contractor shall provide the software analysis, software design, software development, software testing, installation and installation validation, where it exists of software that will provide the Interfaces between DIMS and external systems identified by County.

Contractor is required to distribute a Release Notes Report for all software releases related to these Interfaces. The release reports must contain the following:

- a. Contractor's internal tracking number
- b. name of the module(s) impacted by the change
- c. a description of the functionality included in the release
- d. A copy of all new complete test case(s)/test script(s) that were executed for a specific release by the contractor to test the Interface(s). Regression automated test scripts, when available, will be provided upon request.

Each of the Interfaces is listed below along with a brief description. The County shall develop and provide the Finalized Requirements prior to the commencement of work. The Contractor shall provide the functional specifications, database schema, dataflow diagrams, where applicable, to the county for review and to identify any changes required. Contractor shall incorporate the changes into the Release Notes reports described below before County's Project Director and County's Project Manager accept Deliverables under this Task, and County's Project Director and County's Project Manager will, if acceptable, approve each of such reports.

Subtask 2.1 - Define and Maintain Interface Software for the Statewide Voter Database (VoteCal)

The VoteCal System is the state of California's statewide voter registration database. The Contractor is solely responsible for the software analysis, software design, software development, software testing, installation and installation validation of the existing Interfaces created to transmit data between the VoteCal System and the County's local DIMS.net System. The Contractor is responsible for the data and existing program logic ensuring the integrity of the software algorithms that validate data received from the VoteCal System and transmitted to the VoteCal System by the County's local DIMS.net System. If County makes changes to any hardware, environment, infrastructure, software, functions, or database objects that impacts system functionality and performance, Contractor support to restore the system will be based on a mutually agreed Change Order.

Contractor is required to distribute a Release Notes Report for all VoteCal System software releases. If the Contractor makes changes to the system, the Contractor will provide a Release Note Report for the Contractor changes. The Release Note Report must contain the following:

- a. Contractor's internal tracking number
- b. Name of the module(s) impacted by the change
- c. Description of the functionality included in the release
- d. A copy of all new complete test case(s)/test script(s) that were executed for a specific release by the contractor to test the Interface(s). Regression automated test scripts, when available, will be provided upon request.

Subtask 2.1 Deliverables:

- 2.1.1. Report VoteCal and DIMS.net System data flow and process logic diagrams including transmission file specifications, if existing. In addition, the report shall contain the database schema diagram for all database and tables used for inbound and outbound transmission of data, if existing. Any non-existing artifacts will require clear Finalized Requirements by the County and the Contractor will scope and provide a quote estimate.
- 2.1.2 For each DXI (DIMS.net eXternal Interface) release, Contractor shall thoroughly test all new and existing system interfaces between the VoteCal and DIMS.net System.

- 2.1.3 For each **(DIMS.net eXternal Interface)** release, when requested by the County, Contractor shall provide training on all functional changes to the DIMS.net System screens, data flows, workflows and exception processing, where existing that are the result of a VoteCal System release.
- 2.1.4 For each **(DIMS.net eXternal Interface)** release, Contractor shall provide the Release Notes Report and a copy of all new complete test case(s)/test script(s) that were executed for a specific release by the contractor to test the Interface(s). Regression automated test scripts, when available, will be provided upon request that were executed by the contractor to test the Interface(s).
- 2.1.5 For each **(DIMS.net eXternal Interface)** release, Contractor shall provide remote support for installation of the DIMS.net System into County's test and production environments on a mutually agreed date.

Application Programming Interface Implementation

An Application Programming Interface (API) is a set of subroutine definitions, protocols, and tools for building application software. In general terms, it is a set of clearly defined methods of communication between various software components.

This API only applies to existing (JEDI)/E-Pollbook and PollChief (currently in build) interfaces. There are no new API's planned for DIMs.

Subtask 2.2 – Real Time Electronic Pollbook (E-Pollbook) API

The County has implemented a new E-Pollbook solution to replace the paper pollbooks at polling places. The E-Pollbook is a combination of hardware and software that allows election officials to check-in voters, print ballots, and implement Conditional Voter Registration at the Vote Centers on Election Day. The E-Pollbook solution must have a real-time connection to DIMS for voter history to be captured at the Vote Center.

The Contractor shall provide:

1. An Application Programming Interface (API) into the DIMS System that transacts Voter check in data from E-Pollbook to DIMS and Voter record changes from E-Pollbooks to DIMS.
2. Providing scalable software architecture to handle transactions to a DIMS database of over eight million (8,000,000) records - which includes over five million active voter registration records and over three and a half million inactive voter registration records - simultaneously throughout approximately one thousand (1,000) voting center locations in County.
3. The API should be vendor independent, and accessible from other third-party E-Pollbook vendors.

Subtask 2.2 Deliverables:

The County shall provide the Finalized Requirements prior to the commencement of scoping and work. Contractor shall review all requirements and provide an estimate for the following work as listed below:

- 2.2.1 On or before the DIMS quarter two release, pending the receipt of Finalized Requirements by the end of January, Contractor shall provide functional specification document for the E-Pollbook API.
- 2.2.2 On or before the DIMS quarter two release, pending the receipt of Finalized Requirements by the end of January, Contractor shall provide the software analysis, software design, software development, software testing, installation and installation validation, of the real time E-Pollbook API. For each VoteCal System release.
- 2.2.3 Prior to making the real time E-Pollbook API available to the County, the Contractor shall thoroughly test the real time E-Pollbook API.
- 2.2.4 Upon any change or enhancement to the real time E-Pollbook API on or before the making of the change or enhancement available to the County, the Contractor shall provide documentation and support on all functional aspects of the real time E-Pollbook API including, but not limited to, data flows, work flows, and exception processing, where exists.
- 2.2.5 Contractor shall provide the release report(s) (Release Notes) of the changes to the real time E-Pollbook API within twenty-four (24) hours of any change or enhancement where exists. A copy of all new complete test case(s)/test script(s) that were executed for a specific release by the contractor to test the Interface(s). Regression automated test scripts, when available, will be provided upon request.
- 2.2.6 Contractor shall provide remote support for installation of the E-Pollbook API into County's test and production environments.
- 2.2.7 Contractor's Delta service must be able to generate delta results within twenty (20) minutes on each cycle. Provided that the hardware/infrastructure resources outside of the control of the Contractor are sufficient and configuration of Delta loads are followed based upon Contractor recommendations. (i.e., two-minute loads).

TASK 3 – EXTERNAL ACCESS PLAN AND CONFIGURATION

Contractor shall provide written recommendations and support that include capability for limited external access to County's local DIMS.net System by a select group of City Clerks in Los Angeles. The external DIMS access for the City Clerks shall allow for:

- A. Capability to access the voter file, but not to edit the voter file.
- B. Capability to access the full absentee voter system.

- C. Capability to check signatures and an internal tracker so that the cities in the County may be billed for signature look up but not for simply viewing voter files.
- D. Capability to exchange polls and officer's information.
- E. Capability to send voter updates to the County system tied to automatically generated letter to voter to confirm.
- F. Capability to add and access multilingual voter information.
- G. Capability to add city/municipal voting history to individual voter files.
- H. Capability to use electronic mail to flow documents or files to/from County system.
- I. Such other requirements as are specified by County's Project Director.

Task 3 Deliverables:

- 3.1 Contractor shall provide consulting services around use case analysis to determine appropriate DIMS.net System access by the City Clerks.
- 3.2 Contractor shall provide a written report outlining the configuration setting changes in DIMS.net System required to set-up City Clerk access.
- 3.3 Contractor shall provide training to County describing steps for configuration of security access changes in DIMS.net System required to set-up limited City Clerk access.
- 3.4 Contractor shall advise County of configuration setting changes in DIMS.net System required to setup City Clerk access in both the Test and Production Environments.

TASK 4 – CHANGE ORDER PROCESS

Over the life of this contract, there may be a need for new development in form of application modifications to DIMSNet, Gateway modifications, and/or the creation of new reports. Contractor must track the submission of change requests and provide status. Departmental staff shall submit all development and report requests to the Contractor. Contractor will facilitate all communication between the Contractor development team and the County. If a third party is involved, the County will need to be the facilitator.

After the County submission of the Finalized Requirements and supporting documentation, Contractor will meet with Departmental staff to ensure they are clear on the nature of the request. During the submission process, Departmental staff will provide the priority of the request. Contractor will provide an estimate for the cost and implementation timeframe for each change request. Upon receipt, Departmental staff will submit a Change Order for said request. After submission and execution of change request, Contractor must implement the modification by the estimated timeframe.

All modifications must be tested and approved in the Department's UAT environment prior to promotion to production.

If recertification is triggered by any Change Request, Contractor must coordinate the testing effort with the Secretary of State. The cost of the recertification must be incorporated into the original estimate since the Department cannot compensate the recertification fees directly.

Contractor will be responsible for the cost of re-certification if there are bugs or issues in the DIMSNet environment that require recertification.

Task 4 Deliverable:

- 4.1 Contractor will submit Change Order with firm and fixed pricing according to Appendix B (Pricing Schedule) when applicable.

TASK 5 ACCOUNT MANAGER

The Contractor shall hire and provide an Account Manager that is assigned to work Problems and enhancements that are reported/requested by the County. The Contractor's Account Manager shall be responsible for Contractor's day-to-day activities as related to this Contract and for reporting to County in the manner set forth by Department. The Contractor's Account Manager shall be responsible for Contractor's performance of all its tasks and subtasks and ensuring Contractor's compliance with this Contract.

From the Effective Date through the expiration of the term of this Contract, the Contractor's Account Manager shall meet and confer with County's Project Manager on a regular basis to review project progress and discuss project coordination. Such meetings shall be conducted at a time and place convenient to County's Project Manager.

The Contractors will notify County in writing of any changes in the name and contact information of Contractor's Account Manager.

3.0 QUALITY CONTROL

The Contractor must establish and utilize a comprehensive Quality Control Plan (QCP) to assure the County a consistently high level of service throughout the term of the Contract. QCP must be submitted to County Project Manager within ten (10) business days after execution of Contract. Failure to comply will result in an assessment of one hundred dollars (\$100) per occurrence. Changes to the QCP can be suggested for Department's review and approval. Upon approval of changes, Contractor shall update the QCP and resubmit the plan to the County Project Manager. The plan shall include, but may not be limited to the following:

- 3.1 Method of monitoring to ensure that Contract requirements are being met.
- 3.2 A record of all inspections conducted by the Contractor, any corrective action taken, the time a problem was first identified, a clear description of the problem, and the time elapsed between identification and completed corrective action.

- 3.3 A method of ensuring uninterrupted service to Department in the event of a strike of the Contractor's employees or any other unusual occurrence which would result in the Contractor being unable to perform the contracted work.

4.0 QUALITY ASSURANCE PLAN

The County will evaluate the Contractor performance under this Contract using the quality assurance procedures as defined in Subparagraph 8.15 (County's Quality Assurance Plan) of this Contract.

4.1 Monthly Meetings – Conference Call

Contractor is required to schedule and host monthly meetings via teleconference at a mutually agreed time and date. Failure to schedule and host meeting will cause an assessment of one hundred dollars (\$100) per occurrence.

4.2 Annual Meeting –Remotely

Contractor is required to schedule and host no less than one (1) meeting per year to be conducted at a location to be agreed upon by both County and Contractor. Failure to schedule and host meeting will cause an assessment of one hundred dollars (\$100).

4.3 Contract Discrepancy Report

Verbal notification of a Contract discrepancy will be made to the Contract Project Manager as soon as possible whenever a Contract discrepancy is identified.

The County Project Manager and/or designee and Contractor will mutually determine whether a formal Contract Discrepancy Report (Statement of Work Exhibits, Exhibit 1) shall be issued. Upon receipt of this document, the Contractor is required to respond in writing to the County Contract Project Manager within eight (8) business hours, acknowledging the reported discrepancies or presenting contrary evidence. A plan for correction of all deficiencies identified in the Contract Discrepancy Report shall be submitted to the County Contract Project Manager and/or County Contract Project Monitor within three (3) workdays. The problem shall be resolved as soon as possible, or a time period mutually agreed upon by the County and the Contractor.

4.4 County Observations

In addition to departmental contracting staff, other County personnel may observe performance, activities, and review documents relevant to this Contract at any time during normal business hours. However, these personnel may not unreasonably interfere with the Contractor's performance.

4.5 Core Application Software Upgrades Release Notes Report

Contractor is required to distribute a Release Notes Report to detail the items included in each software version release. The Release Notes Report must contain:

- a. Contractor's internal tracking number
- b. Name of the module impacted
- c. Name of the entity that reported the line item
- d. A description of the problem
- e. A description of the resolution

A copy of all new complete test case(s)/test script(s) that were executed for a specific release by the contractor to test the Interface(s). Regression automated test scripts, when available, will be provided upon request.

The Contractor shall provide the Release Notes Report to the County within twenty-four (24) hours of the County receiving the System upgrade. Failure to distribute a report will cause an assessment of one hundred dollars (\$100) for every occurrence.

5.0 RESPONSIBILITIES

The County's and the Contractor's responsibilities are as follows:

COUNTY

5.1 Personnel

The County will administer the Contract according to the Contract, Paragraph 6.0, Administration of Contract - County. Specific duties will include:

- 5.1.1 Monitoring the Contractor's performance in the daily operation of this Contract.
- 5.1.2 Providing direction to the Contractor in areas relating to policy, information and procedural requirements.
- 5.1.3 Preparing Amendments and Change Orders in accordance with the Contract, Paragraph 8. Standard Terms and Conditions, Sub-paragraph 8.1 Amendments.

CONTRACTOR

5.2 Account Manager

- 5.2.1 Contractor shall provide an Account Manager and an alternate Account Manager when primary Account Manager is unavailable. County will have access to the Account Manager during Non-Countywide elections normal support hours will be from 7:00am–5:00pm Pacific Local Time Monday through Friday and upon request 24/7 during Countywide elections from E-

30 to E+20. Contractor shall provide a telephone number where the Account Manager may be reached.

- 5.2.2 Account Manager/alternate shall act as a central point of contact with the County.
- 5.2.3 Account Manager/alternate shall have a minimum of five (5) years of experience.
- 5.2.4 Account Manager/alternate shall have full authority to act for Contractor on all matters relating to the daily operation of the Contract and be responsible for Contractor's performance on all Tasks, Subtasks, Deliverables, and overall compliance with terms of Contract. Account Manager/alternate shall be able to effectively communicate, in English, both orally and in writing.
- 5.2.5 Account Manager/alternate shall meet and confer with County's Project Manager as needed and by request of County. Such meeting will take place remotely at a mutually agreed upon date and time.
- 5.2.6 Account Manager/alternate shall work with County on Problems and enhancements that are reported/requested by County.
- 5.2.7 The contractors will notify County in writing of any changes in the name and contact information of Contractor's Account Manager/alternate.

5.3 Personnel

- 5.3.1 Contractor shall assign a sufficient number of employees to perform the required work. At least one (1) employee remotely shall be authorized to act for Contractor in every detail and must speak and understand English.
- 5.3.2 Contractor shall be required to background check, only Contractor's employees that have direct access to County data as set forth in sub-paragraph 7.5 – Background and Security Investigations, of the Contract.

5.4 Uniforms/Identification Badges

- 5.4.1 Contractor employees assigned to County facilities shall wear appropriate attire at all times.
- 5.4.2 Contractor shall ensure their employees are appropriately identified as set forth in sub-paragraph 7.4 – Contractor's Staff Identification, of the Contract.

5.5 Materials and Equipment

The purchase of all materials/equipment to provide the needed services is the responsibility of the Contractor. Contractor shall use materials and equipment that are safe for the environment and safe for use by the employee.

5.6 Training

5.6.1 Contractor shall provide training programs for all new Contractor employees and continuing in-service training for all Contractor employees.

5.6.2 All Contractor employees shall be trained in their assigned tasks and in the safe handling of equipment. All equipment shall be checked daily for safety. All Contractor employees must wear safety and protective gear according to OSHA standards.

5.7 Contractor's Office

Contractor shall maintain an office with a telephone in the company's name where Contractor conducts business. The office shall be staffed during required hours needed to respond to all inquiries and requests made by County as set forth in this Statement of Work.

6.0 HOURS/DAY OF WORK

Contractor shall be staffed during required hours needed to respond to all inquiries and requests made by County as set forth in Section 2.0 Tasks and Deliverables of this Statement of Work.

7.0 WORK SCHEDULES

Contractor shall submit revised schedules when actual schedule differs substantially from planned schedule. Said revisions shall be submitted to the County Project Manager for review and approval within fifteen (15) working days prior to scheduled time for work, unless an emergency occurs Contractor will notify as soon as possible.

8.0 WORK

8.1 General

Contractor shall complete and deliver to County on a timely basis, all Tasks, subtasks, Deliverables, goods, services, and other Work as set forth in this Contract. Contractor acknowledges that it must complete all work required under this Contract in a timely manner and in accordance with the requirements and Specifications set forth in the SOW.

8.2 Approval of Work

Contractor shall complete and deliver all Tasks, subtasks, Deliverables, goods and services in accordance with the requirements and Specifications set forth

in the SOW and must have written approval of County's Project Director. Written approval by the County's Project Director shall not be unreasonably delayed. In no event shall County be liable or responsible for any payment prior to such written approval.

8.3 Gratuitous Work

If the Contractor provides any Tasks, Deliverables, goods, services, or other work, other than as specified in this Contract, the same shall be deemed to be a gratuitous effort on the part of the Contractor, and the Contractor shall have no claim whatsoever against the County.

8.4 Unscheduled Work

8.4.1 The County Project Manager and/or his designee may authorize the Contractor to perform unscheduled work, including, but not limited to, repairs and replacements when the need for such work arises out of extraordinary incidents such as vandalism, acts of God, and third-party negligence; or to add to, modify or refurbish existing facilities.

8.4.2 Prior to performing any unscheduled work, the Contractor shall prepare and submit a written description of the work with an estimate of labor and materials. If the unscheduled work exceeds the Contractor's estimate, the County Project Director and/or his designee must approve the excess cost. In any case, no unscheduled work shall commence without written authorization.

8.4.3 All unscheduled work shall commence on the established specified date mutually agreed upon by County and Contractor. Contractor shall proceed diligently to complete said work within the time allotted.

8.4.4 The County reserves the right to perform unscheduled work itself or assign the work to another Contractor.

9.0 GREEN INITIATIVES

9.1 Contractor shall make reasonable efforts to initiate "green" practices for environmental and energy conservation benefits.

9.2 Contractor shall notify County's Project Manager of Contractor's new green initiatives prior to the Contract commencement.

10.0 PERFORMANCE REQUIREMENTS SUMMARY

A Performance Requirements Summary (PRS) chart, Statement of Work Exhibits, Exhibit 3, listing required services that will be monitored by the County during the term of this Contract is an important monitoring tool for the County. The chart should:

- reference section of the Contract
- list required services

- indicate method of monitoring
- indicate the deductions/fees to be assessed for each service that is not satisfactory

All listings of services used in the Performance Requirements Summary (PRS) are intended to be completely consistent with the Contract and the SOW, and are not meant in any case to create, extend, revise, or expand any obligation of Contractor beyond that defined in the Contract and the SOW. In any case of apparent inconsistency between services as stated in the Contract and the SOW and this PRS, the meaning apparent in the Contract and the SOW will prevail. If any service seems to be created in this PRS which is not clearly and forthrightly set forth in the Contract and the SOW, that apparent service will be null and void and place no requirement on Contractor.

DIMS.net ELECTION MANAGEMENT SYSTEM**Contractor's Name: RUNBECK ELECTION SERVICES**

Table of Contents		Page Number(s)
1	Total Pricing Summary	2
2	Pricing Years 1-2 and Optional Years 3-4	3
3	System Implementation - Subtasks/Deliverables	4
4	System Maintenance - Firm Fixed Price	5
5	Optional Work - Fixed Hourly Rate	6
6	Schedule B.1 - Optional Work	7

DIMS.net ELECTION MANAGEMENT SYSTEM
Contractor's Name: RUNBECK ELECTION SERVICES

Work Description	Total Firm Fixed Price
System Maintenance	\$2,749,151
Optional Work (Pool Dollars)	\$400,000
Total Price	\$3,149,151

DIMS.net ELECTION MANAGEMENT SYSTEM
Contractor's Name: RUNBECK ELECTION SERVICES

Work Description	Year 1	Year 2	Optional Year 3	Optional Year 4	Total Firm Fixed Price
System Maintenance	\$674,535	\$674,535	\$691,398	\$708,683	\$2,749,151
Optional Work (Pool Dollars)	\$100,000	\$100,000	\$100,000	\$100,000	\$400,000
Total	\$774,535	\$774,535	\$791,398	\$808,683	\$3,149,151

DIMS.net ELECTION MANAGEMENT SYSTEM**Contractor's Name: RUNBECK ELECTION SERVICES****Subtask/Deliverables****TASK 1 – SUPPORT AND MAINTENANCE SERVICES**

1.1 - Core Application Software Upgrades

1.2 – Help Desk Support

A contact will be available twenty-four (24) hours a day, seven (7) days a week during Critical Election Periods. At any other time, a resource will be available during business hours of 7:00am-5:00pm Pacific Local Time. In addition, respond according to severity levels above.

1.3 - Status Reports- Help Desk Status Reports

1.4 – Issue Management Tracking

Within three (3) months of Effective Date of the Contract, Contractor must establish an Issue Management Tracking process that provides the County access to DIMS issue report. This tracking process must also provide a reporting mechanism to export the issues/bugs for County's management review with Operation teams.

TASK 2 – SYSTEM INTERFACE PROGRAMMING AND EXECUTION

2.1 - Define and Maintain Interface Software for the Statewide Voter Database (VoteCal)

2.2 - Real Time Electronic Pollbook (E-Pollbook) API

TASK 3 – EXTERNAL ACCESS PLAN AND CONFIGURATION

3.1 Contractor shall provide consulting services around use case analysis to determine appropriate DIMS.net System access by the City Clerks.

3.2 Contractor shall provide a written report outlining the configuration setting changes in DIMS.net System required to set-up City Clerk access.

3.3 Contractor shall provide training to County describing steps for configuration of security access changes in DIMS.net System required to set-up limited City Clerk access.

3.4 Contractor shall advise County of configuration setting changes in DIMS.net System required to setup City Clerk access in both the Test and Production Environments.

TASK 4 – CHANGE ORDER PROCESS

4.1 - Contractor will submit Change Order with firm and fixed pricing according to Appendix B (Pricing Schedule), when applicable. County will approve any Change Order by utilizing the Optional Work Schedule B.1 for Pool Dollars.

TASK 5 – ACCOUNT MANAGER

The Contractor shall hire and provide an Account Manager that is assigned to work Problems and enhancements that are reported/requested by the County. The Contractor's Account Manager shall be responsible for Contractor's day-to-day activities as related to this Contract and for reporting to County in the manner set forth by Department. The Contractor's Account Manager shall be responsible for Contractor's performance of all its tasks and subtasks and ensuring Contractor's compliance with this Contract.

From the Effective Date through the expiration of the term of this Contract, the Contractor's Account Manager shall meet and confer with County's Project Manager on a regular basis to review project progress and discuss project coordination. Such meetings shall be conducted at a time and place convenient to County's Project Manager.

The Contractors will notify County in writing of any changes in the name and contact information of Contractor's Account Manager.

DIMS.net ELECTION MANAGEMENT SYSTEM**Contractor's Name: RUNBECK ELECTION SERVICES**

	System Maintenance	Firm Fixed Price				
	Description of System Maintenance	Year 1	Year 2	Optional Year 3	Optional Year 4	Firm Fixed Price Years 1-4
*	DIMS.net Software License, Maintenance & Support Services	\$674,535	\$674,535	\$691,398	\$708,683	\$2,749,151
	Application Software					
	Application Modifications					
	Replacement Products					
	Updates/Upgrades					
	Help Desk Support (Technical and User Support)					
	New Alternate Account Manager- 24/7 Help Desk Assistance during Countywide Elections					
	Contract Administration/Security Requirements					
	Total of System Maintenance	\$674,535	\$674,535	\$691,398	\$708,683	\$2,749,151

- * **Software License and Maintenances:** These fees will be billed in monthly payments. Each monthly payment shall be paid in arrears of the applicable month invoiced. The annual contract sum will not increase for the Initial two (2) year Base Term and will increase 2.5% for Optional Year three (3) and 2.5% for Optional Year four (4).

DIMS.net ELECTION MANAGEMENT SYSTEM
Contractor's Name: RUNBECK ELECTION SERVICES

Optional Work*	Fixed Hourly Rate
Labor Resources	\$175
1. Requested on-site service = \$1,820 per day/per person 2. Requested remote database migration support = \$175 per hour 3. Requested remote technical support = \$175 per hour 4. Requested system enhancements = \$175 per hour 5. Requested VoteRemote DLL (ASR DLL) = \$175 per hour	

Fixed Hourly Rate shall be used to calculate Maximum Fixed Price for Optional Work, which may be provided by Contractor during the term of the Agreement. Fixed Hourly Rate shall not increase during the term of the Agreement.

* Optional Work will be determined solely by County. Contractor is not required to enter any pricing other than the Fixed Hourly Rate.

**DIMS.net ELECTION MANAGEMENT SYSTEM SCHEDULE B.1
OPTIONAL WORK**

APPENDIX B - PAYMENT SCHEDULE

DIMS.net ELECTION MANAGEMENT SYSTEM					
Contractor's Name: RUNBECK ELECTION SERVICES					
<p><u>SCHEDULE B.1</u> Optional Work</p>					
1. OPTIONAL WORK/Pool Dollar					
Item No.	Description/type	Request Date	Delivery Date	County Approval Date	Maximum Fixed price
	SUBTOTAL				\$

Note 2: Any applicable state and local taxes are not included and are the responsibility of Customer. Premium or rush transportation services incurred in connection with deliverables included in the Total Fees are additive and will be billed as incurred.

APPENDIX C**CONTRACTOR'S EEO CERTIFICATION**

 Contractor Name

 Address

 Internal Revenue Service Employer Identification Number
GENERAL CERTIFICATION

In accordance with Section 4.32.010 of the Code of the County of Los Angeles, the contractor, supplier, or vendor certifies and agrees that all persons employed by such firm, its affiliates, subsidiaries, or holding companies are and will be treated equally by the firm without regard to or because of race, religion, ancestry, national origin, or sex and in compliance with all anti-discrimination laws of the United States of America and the State of California.

CONTRACTOR'S SPECIFIC CERTIFICATIONS

- | | | | |
|----|---|------------------------------|-----------------------------|
| 1. | The Contractor has a written policy statement prohibiting discrimination in all phases of employment. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2. | The Contractor periodically conducts a self-analysis or utilization analysis of its work force. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 3. | The Contractor has a system for determining if its employment practices are discriminatory against protected groups. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 4. | Where problem areas are identified in employment practices, the Contractor has a system for taking reasonable corrective action, to include establishment of goals or timetables. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

 Authorized Official's Printed Name and Title

 Authorized Official's Signature

 Date

APPENDIX D

COUNTY'S ADMINISTRATION

CONTRACT:

CONTRACT NO:

COUNTY PROJECT DIRECTOR:

Name:

Title:

Address:

Telephone:

E-Mail Address:

COUNTY PROJECT MANAGER:

Name:

Title:

Address:

Telephone:

E-Mail Address:

COUNTY CONTRACT PROJECT MONITOR:

Name:

Title:

Address:

Telephone:

E-Mail Address:

COUNTY CONTRACTS UNIT:

Name:

Address:

Telephone:

E-Mail Address:

Name:

Telephone:

E-Mail Address:

INVOICE QUESTIONS:

For invoice questions, send an e-mail below and copy the County Project Director/Manager and monitor: accountspayable@rrcc.lacounty.gov

Include the name of your company, contract name and contact number.

APPENDIX D

COUNTY CONTRACTS AND GRANTS ANALYST:

Name:
Address:

Telephone:
E-Mail Address:

COUNTY CONTRACTS AND GRANTS MONITOR:

Name:
Address:

Telephone:
E-Mail Address:

APPENDIX E

CONTRACTOR'S ADMINISTRATION

CONTRACTOR:

CONTRACT NO:

CONTRACTOR'S PROJECT DIRECTOR:

Name:

Title:

Address:

Telephone:

E-Mail Address:

CONTRACTOR'S PROJECT MANAGER:

Name:

Title:

Address:

Telephone:

E-Mail Address:

CONTRACTOR'S AUTHORIZED OFFICIAL:

Name:

Title:

Address:

Telephone:

E-Mail Address:

NOTICES TO CONTRACTOR SHALL BE SENT TO THE FOLLOWING ADDRESS:

Name:

Title:

Address:

Telephone:

E-Mail Address:

APPENDIX F**CONTRACTOR ACKNOWLEDGEMENT AND CONFIDENTIALITY**

(Note: This certification is to be executed and returned to County with Contractor's executed Contract. Work cannot begin on the Contract until County receives this executed document.)

CONTRACTOR NAME _____ Contract No. _____

GENERAL INFORMATION:

The Contractor referenced above has entered into a contract with the County of Los Angeles to provide certain services to the County. The County requires the Corporation to sign this Contractor Acknowledgement, Confidentiality, and Copyright Assignment Agreement.

CONTRACTOR ACKNOWLEDGEMENT:

Contractor understands and agrees that the Contractor employees, consultants, Outsourced Vendors and independent contractors (Contractor's Staff) that will provide services in the above referenced agreement are Contractor's sole responsibility. Contractor understands and agrees that Contractor's Staff must rely exclusively upon Contractor for payment of salary and any and all other benefits payable by virtue of Contractor's Staff's performance of work under the above-referenced contract.

Contractor understands and agrees that Contractor's Staff are not employees of the County of Los Angeles for any purpose whatsoever and that Contractor's Staff do not have and will not acquire any rights or benefits of any kind from the County of Los Angeles by virtue of my performance of work under the above-referenced contract. Contractor understands and agrees that Contractor's Staff will not acquire any rights or benefits from the County of Los Angeles pursuant to any agreement between any person or entity and the County of Los Angeles.

CONFIDENTIALITY AGREEMENT:

Contractor and Contractor's Staff may be involved with work pertaining to services provided by the County of Los Angeles and, if so, Contractor and Contractor's Staff may have access to confidential data and information pertaining to persons and/or entities receiving services from the County. In addition, Contractor and Contractor's Staff may also have access to proprietary information supplied by other vendors doing business with the County of Los Angeles. The County has a legal obligation to protect all such confidential data and information in its possession, especially data and information concerning health, criminal, and welfare recipient records. Contractor and Contractor's Staff understand that if they are involved in County work, the County must ensure that Contractor and Contractor's Staff, will protect the confidentiality of such data and information. Consequently, Contractor must sign this Confidentiality Agreement as a condition of work to be provided by Contractor's Staff for the County.

Contractor and Contractor's Staff hereby agrees that they will not divulge to any unauthorized person any data or information obtained while performing work pursuant to the above-referenced contract between Contractor and the County of Los Angeles. Contractor and Contractor's Staff agree to forward all requests for the release of any data or information received to County's Project Manager.

Contractor and Contractor's Staff agree to keep confidential all health, criminal, and welfare recipient records and all data and information pertaining to persons and/or entities receiving services from the County, design concepts, algorithms, programs, formats, documentation, Contractor proprietary information and all other

APPENDIX F**CONTRACTOR ACKNOWLEDGEMENT AND CONFIDENTIALITY**

original materials produced, created, or provided to Contractor and Contractor's Staff under the above-referenced contract. Contractor and Contractor's Staff agree to protect these confidential materials against disclosure to other than Contractor or County employees who have a need to know the information. Contractor and Contractor's Staff agree that if proprietary information supplied by other County vendors is provided to me during this employment, Contractor and Contractor's Staff shall keep such information confidential.

Contractor and Contractor's Staff agree to report any and all violations of this agreement by Contractor and Contractor's Staff and/or by any other person of whom Contractor and Contractor's Staff become aware.

Contractor and Contractor's Staff acknowledge that violation of this agreement may subject Contractor and Contractor's Staff to civil and/or criminal action and that the County of Los Angeles may seek all possible legal redress.

SIGNATURE: _____

DATE: ____/____/____

PRINTED NAME: _____

POSITION: _____

APPENDIX G

Title 2 ADMINISTRATION
Chapter 2.203.010 through 2.203.090
CONTRACTOR EMPLOYEE JURY SERVICE

2.203.010 Findings.

The board of supervisors makes the following findings. The county of Los Angeles allows its permanent, full-time employees unlimited jury service at their regular pay. Unfortunately, many businesses do not offer or are reducing or even eliminating compensation to employees who serve on juries. This creates a potential financial hardship for employees who do not receive their pay when called to jury service, and those employees often seek to be excused from having to serve. Although changes in the court rules make it more difficult to excuse a potential juror on grounds of financial hardship, potential jurors continue to be excused on this basis, especially from longer trials. This reduces the number of potential jurors and increases the burden on those employers, such as the county of Los Angeles, who pay their permanent, full-time employees while on juror duty. For these reasons, the county of Los Angeles has determined that it is appropriate to require that the businesses with which the county contracts possess reasonable jury service policies. (Ord. 2002-0015 § 1 (part), 2002)

2.203.020 Definitions.

The following definitions shall be applicable to this chapter:

- A. "Contractor" means a person, partnership, corporation or other entity which has a contract with the county or a subcontract with a county contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more such contracts or subcontracts.
- B. "Employee" means any California resident who is a full-time employee of a contractor under the laws of California.
- C. "Contract" means any agreement to provide goods to, or perform services for or on behalf of, the county but does not include:
 - 1. A contract where the board finds that special circumstances exist that justify a waiver of the requirements of this chapter; or
 - 2. A contract where federal or state law or a condition of a federal or state program mandates the use of a particular contractor; or
 - 3. A purchase made through a state or federal contract; or
 - 4. A monopoly purchase that is exclusive and proprietary to a specific manufacturer, distributor, or reseller, and must match and inter-member with existing supplies, equipment or systems maintained by the county pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section P-3700 or a successor provision; or
 - 5. A revolving fund (petty cash) purchase pursuant to the Los Angeles County Fiscal Manual, Section 4.4.0 or a successor provision; or
 - 6. A purchase card purchase pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section P-2810 or a successor provision; or
 - 7. A non-agreement purchase with a value of less than \$5,000 pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section A-0300 or a successor provision; or
 - 8. A bona fide emergency purchase pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section PP-1100 or a successor provision.

APPENDIX G

Title 2 ADMINISTRATION
Chapter 2.203.010 through 2.203.090
CONTRACTOR EMPLOYEE JURY SERVICE

Page 2 of 3

- D. "Full time" means 40 hours or more worked per week, or a lesser number of hours if:
1. The lesser number is a recognized industry standard as determined by the chief administrative officer, or
 2. The contractor has a long-standing practice that defines the lesser number of hours as full time.
- E. "County" means the county of Los Angeles or any public entities for which the board of supervisors is the governing body. (Ord. 2002-0040 § 1, 2002: Ord. 2002-0015 § 1 (part), 2002)

2.203.030 Applicability.

This chapter shall apply to contractors who enter into contracts that commence after July 11, 2002. This chapter shall also apply to contractors with existing contracts which are extended into option years that commence after July 11, 2002. Contracts that commence after May 28, 2002, but before July 11, 2002, shall be subject to the provisions of this chapter only if the solicitations for such contracts stated that the chapter would be applicable. (Ord. 2002-0040 § 2, 2002: Ord. 2002-0015 § 1 (part), 2002)

2.203.040 Contractor Jury Service Policy.

A contractor shall have and adhere to a written policy that provides that its employees shall receive from the contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that employees deposit any fees received for such jury service with the contractor or that the contractor deduct from the employees' regular pay the fees received for jury service. (Ord. 2002-0015 § 1 (part), 2002)

2.203.050 Other Provisions.

- A. Administration. The chief administrative officer shall be responsible for the administration of this chapter. The chief administrative officer may, with the advice of county counsel, issue interpretations of the provisions of this chapter and shall issue written instructions on the implementation and ongoing administration of this chapter. Such instructions may provide for the delegation of functions to other county departments.
- B. Compliance Certification. At the time of seeking a contract, a contractor shall certify to the county that it has and adheres to a policy consistent with this chapter or will have and adhere to such a policy prior to award of the contract. (Ord. 2002-0015 § 1 (part), 2002)

2.203.060 Enforcement and Remedies.

For a contractor's violation of any provision of this chapter, the county department head responsible for administering the contract may do one or more of the following:

1. Recommend to the board of supervisors the termination of the contract; and/or,
2. Pursuant to chapter 2.202, seek the debarment of the contractor. (Ord. 2002-0015 § 1 (part), 2002)

APPENDIX G

Page 3 of 3

2.203.070. Exceptions.

- A. Other Laws. This chapter shall not be interpreted or applied to any contractor or to any employee in a manner inconsistent with the laws of the United States or California.
- B. Collective Bargaining Agreements. This chapter shall be superseded by a collective bargaining agreement that expressly so provides.
- C. Small Business. This chapter shall not be applied to any contractor that meets all of the following:
 - 1. Has ten or fewer employees during the contract period; and,
 - 2. Has annual gross revenues in the preceding twelve months which, if added to the annual amount of the contract awarded, are less than \$500,000; and,
 - 3. Is not an affiliate or subsidiary of a business dominant in its field of operation.

“Dominant in its field of operation” means having more than ten employees and annual gross revenues in the preceding twelve months which, if added to the annual amount of the contract awarded, exceed \$500,000.

“Affiliate or subsidiary of a business dominant in its field of operation” means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation. (Ord. 2002-0015 § 1 (part), 2002)

2.203.090. Severability.

If any provision of this chapter is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. (Ord. 2002-0015 § 1 (part), 2002)

APPENDIX H

Safely Surrendered



No shame. No blame. No names.

In Los Angeles County: 1-877-BABY SAFE • 1-877-222-9723

www.babysafela.org



APPENDIX H

In Los Angeles County: 1-877-BABY SAFE • 1-877-222-9723

www.babysafela.org

Safely Surrendered Baby Law

What is the Safely Surrendered Baby Law?

California's Safely Surrendered Baby Law allows parents or other persons, with lawful custody, which means anyone to whom the parent has given permission to confidentially surrender a baby. As long as the baby is three days (72 hours) of age or younger and has not been abused or neglected, the baby may be surrendered without fear of arrest or prosecution.

Every baby deserves a chance for a healthy life. If someone you know is considering abandoning a baby, let her know there are other options. For three days (72 hours) after birth, a baby can be surrendered to staff at any hospital or fire station in Los Angeles County.

How does it work?

A distressed parent who is unable or unwilling to care for a baby can legally, confidentially, and safely surrender a baby within three days (72 hours) of birth. The baby must be handed to an employee at a hospital or fire station in Los Angeles County. As long as the baby shows no sign of abuse or neglect, no name or other information is required. In case the parent changes his or her mind at a later date and wants the baby back, staff will use bracelets to help connect them to each other. One bracelet will be placed on the baby, and a matching bracelet will be given to the parent or other surrendering adult.

What if a parent wants the baby back?

Parents who change their minds can begin the process of reclaiming their baby within 14 days. These parents should call the Los Angeles County Department of Children and Family Services at 1-800-540-4000.

Can only a parent bring in the baby?

No. While in most cases a parent will bring in the baby, the Law allows other people to bring in the baby if they have lawful custody.

Does the parent or surrendering adult have to call before bringing in the baby?

No. A parent or surrendering adult can bring in a baby anytime, 24 hours a day, 7 days a week, as long as the parent or surrendering adult surrenders the baby to someone who works at the hospital or fire station.

Does the parent or surrendering adult have to tell anything to the people taking the baby?

No. However, hospital or fire station personnel will ask the surrendering party to fill out a questionnaire designed to gather important medical history information, which is very useful in caring for the baby. The questionnaire includes a stamped return envelope and can be sent in at a later time.

What happens to the baby?

The baby will be examined and given medical treatment. Upon release from the hospital, social workers immediately place the baby in a safe and loving home and begin the adoption process.

What happens to the parent or surrendering adult?

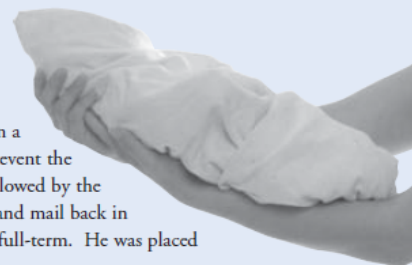
Once the parent or surrendering adult surrenders the baby to hospital or fire station personnel, they may leave at any time.

Why is California doing this?

The purpose of the Safely Surrendered Baby Law is to protect babies from being abandoned, hurt or killed by their parents. You may have heard tragic stories of babies left in dumpsters or public bathrooms. Their parents may have been under severe emotional distress. The mothers may have hidden their pregnancies, fearful of what would happen if their families found out. Because they were afraid and had no one or nowhere to turn for help, they abandoned their babies. Abandoning a baby is illegal and places the baby in extreme danger. Too often, it results in the baby's death. The Safely Surrendered Baby Law prevents this tragedy from ever happening again in California.

A baby's story

Early in the morning on April 9, 2005, a healthy baby boy was safely surrendered to nurses at Harbor-UCLA Medical Center. The woman who brought the baby to the hospital identified herself as the baby's aunt and stated the baby's mother had asked her to bring the baby to the hospital on her behalf. The aunt was given a bracelet with a number matching the anklet placed on the baby; this would provide some identification in the event the mother changed her mind about surrendering the baby and wished to reclaim the baby in the 14-day period allowed by the Law. The aunt was also provided with a medical questionnaire and said she would have the mother complete and mail back in the stamped return envelope provided. The baby was examined by medical staff and pronounced healthy and full-term. He was placed with a loving family that had been approved to adopt him by the Department of Children and Family Services.



APPENDIX H

Ley de Entrega de Bebés *Sin Peligro*



Los recién nacidos pueden ser entregados en forma segura al personal de cualquier hospital o cuartel de bomberos del Condado de Los Ángeles

Sin pena. Sin culpa. Sin nombres.

En el Condado de Los Ángeles: 1-877-BABY SAFE • 1-877-222-9723
www.babysafela.org



APPENDIX H

En el Condado de Los Ángeles: 1-877-BABY SAFE • 1-877-222-9723

www.babysafela.org

Ley de Entrega de Bebés Sin Peligro

¿Qué es la Ley de Entrega de Bebés sin Peligro?

La Ley de Entrega de Bebés sin Peligro de California permite la entrega confidencial de un recién nacido por parte de sus padres u otras personas con custodia legal, es decir cualquier persona a quien los padres le hayan dado permiso. Siempre que el bebé tenga tres días (72 horas) de vida o menos, y no haya sufrido abuso ni negligencia, pueden entregar al recién nacido sin temor de ser arrestados o procesados.

Cada recién nacido se merece la oportunidad de tener una vida saludable. Si alguien que usted conoce está pensando en abandonar a un recién nacido, infórmele que tiene otras opciones. Hasta tres días (72 horas) después del nacimiento, se puede entregar un recién nacido al personal de cualquier hospital o cuartel de bomberos del condado de Los Angeles.

¿Cómo funciona?

El padre/madre con dificultades que no pueda o no quiera cuidar de su recién nacido puede entregarlo en forma legal, confidencial y segura dentro de los tres días (72 horas) del nacimiento. El bebé debe ser entregado a un empleado de cualquier hospital o cuartel de bomberos del Condado de Los Ángeles. Siempre que el bebé no presente signos de abuso o negligencia, no será necesario suministrar nombres ni información alguna. Si el padre/madre cambia de opinión posteriormente y desea recuperar a su bebé, los trabajadores utilizarán brazaletes para poder vincularlos. El bebé llevará un brazalete y el padre/madre o el adulto que lo entregue recibirá un brazalete igual.

¿Qué pasa si el padre/madre desea recuperar a su bebé?

Los padres que cambien de opinión pueden comenzar el proceso de reclamar a su recién nacido dentro de los 14 días. Estos padres deberán llamar al Departamento de Servicios para Niños y Familias (Department of Children and Family Services) del Condado de Los Ángeles al 1-800-540-4000.

¿Sólo los padres podrán llevar al recién nacido?

No. Si bien en la mayoría de los casos son los padres los que llevan al bebé, la ley permite que otras personas lo hagan si tienen custodia legal.

¿Los padres o el adulto que entrega al bebé deben llamar antes de llevar al bebé?

No. El padre/madre o adulto puede llevar al bebé en cualquier momento, las 24 horas del día, los 7 días de la semana, siempre y cuando entreguen a su bebé a un empleado del hospital o cuartel de bomberos.

¿Es necesario que el padre/madre o adulto diga algo a las personas que reciben al bebé?

No. Sin embargo, el personal del hospital o cuartel de bomberos le pedirá a la persona que entregue al bebé que llene un cuestionario con la finalidad de recabar antecedentes médicos importantes, que resultan de gran utilidad para cuidar bien del bebé. El cuestionario incluye un sobre con el sello postal pagado para enviarlo en otro momento.

¿Qué pasará con el bebé?

El bebé será examinado y le brindarán atención médica. Cuando le den el alta del hospital, los trabajadores sociales inmediatamente ubicarán al bebé en un hogar seguro donde estará bien atendido, y se comenzará el proceso de adopción.

¿Qué pasará con el padre/madre o adulto que entregue al bebé?

Una vez que los padres o adulto hayan entregado al bebé al personal del hospital o cuartel de bomberos, pueden irse en cualquier momento.

¿Por qué se está haciendo esto en California? ?

La finalidad de la Ley de Entrega de Bebés sin Peligro es proteger a los bebés para que no sean abandonados, lastimados o muertos por sus padres. Usted probablemente haya escuchado historias trágicas sobre bebés abandonados en basureros o en baños públicos. Los padres de esos bebés probablemente hayan estado pasando por dificultades emocionales graves. Las madres pueden haber ocultado su embarazo, por temor a lo que pasaría si sus familias se enteraran. Abandonaron a sus bebés porque tenían miedo y no tenían nadie a quien pedir ayuda. El abandono de un recién nacido es ilegal y pone al bebé en una situación de peligro extremo. Muy a menudo el abandono provoca la muerte del bebé. La Ley de Entrega de Bebés sin Peligro impide que vuelva a suceder esta tragedia en California.

Historia de un bebé

A la mañana temprano del día 9 de abril de 2005, se entregó un recién nacido saludable a las enfermeras del Harbor-UCLA Medical Center. La mujer que llevó el recién nacido al hospital se dio a conocer como la tía del bebé, y dijo que la madre le había pedido que llevara al bebé al hospital en su nombre. Le entregaron a la tía un brazalete con un número que coincidía con la pulsera del bebé; esto serviría como identificación en caso de que la madre cambiara de opinión con respecto a la entrega del bebé y decidiera recuperarlo dentro del período de 14 días que permite esta ley. También le dieron a la tía un cuestionario médico, y ella dijo que la madre lo llenaría y lo enviaría de vuelta dentro del sobre con franqueo pagado que le habían dado. El personal médico examinó al bebé y se determinó que estaba saludable y a término. El bebé fue ubicado con una buena familia que ya había sido aprobada para adoptarlo por el Departamento de Servicios para Niños y Familias.





Standard/Registered Multi Licensee Deposit Account
Software Escrow Agreement

Date	2/3/2020
Licensor	Runbeck Election Services, Inc.
Agreement Number	70865

Notice: This template has been drafted on the assumption that all contracting parties are based in the United States of America. If the contracting parties are based outside of the United States of America, NCC Group recommends that the parties take independent legal advice to ascertain what appropriate amendments should be made to this agreement.

Escrow Agreement Dated: 2/3/2020

Between:

- (1) Runbeck Election Services, Inc., an Arizona corporation whose principal place of business is at 2800 S. 36th Street, Phoenix, AZ 85034 ("Licensor"); and
- (2) NCC Group Escrow Associates, LLC, a limited liability company organized and existing under the laws of Georgia with its principal office at 11605 Haynes Bridge Road, 400 Northwinds, Suite 550, Alpharetta, GA 30009 USA ("NCC Group").

Background:

- (A) Each Licensee has been granted a license to use the Software which comprises computer programs.
- (B) Certain technical information and/or documentation relating to the Software is the confidential information and intellectual property of the Licensor and/or a third party.
- (C) The Licensor acknowledges that in certain circumstances, such information and/or documentation would be required by a Licensee in order for it to continue to exercise its rights under its License Agreement with the Licensor.
- (D) The parties therefore agree that such information and/or documentation should be placed with a trusted third party, NCC Group, so that such information and/or documentation can be released to the Licensee should certain circumstances arise.

Agreement:

In consideration of the mutual undertakings and obligations contained in this Agreement, the parties agree that:

1 Definitions and Interpretation

1.1 In this Agreement the following terms shall have the following meanings:

"Affiliate" means any entity directly or indirectly controlling, controlled by or under common control with NCC Group.

"Agreement" means the terms and conditions of this escrow agreement set out below, including the Schedules and Appendices hereto.

"Business Day" means a day other than a Saturday, Sunday or other day on which commercial banks in Atlanta, Georgia are authorized or required by law to close.

"Confidential Information" means all technical and/or commercial information not in the public domain and which is designated in writing as confidential by any party together with all other information of any party which may reasonably be regarded as confidential information.

"Data Protection Legislation" means the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679) and any related legislation, regulations, requirements or guidance from time to time.

"Deposit Account" means an account set up on the execution of a Deposit Account Agreement under which specific Escrow Material is deposited by the Licensor with NCC Group.

"Deposit Account Agreement" means an agreement in the form attached as Appendix 1, for the setting up of a Deposit Account.

"Deposit Form" means the form which is to be completed by the Licensor and delivered to NCC Group with each deposit of the Escrow Material.

"Escrow Material" means the Source Code of the Software and such other material and documentation (including updates and upgrades thereto and new versions thereof) as are necessary to be delivered or deposited to comply with Section 3 of this Agreement.

"Intellectual Property Rights" mean any copyright, patents, design patents, registered designs, design rights, utility models, trademarks, service marks, trade secrets, know how, database rights, moral rights, confidential information, trade or business names, domain names, and any other rights of a similar nature including industrial and proprietary rights and other similar protected rights in any country or jurisdiction together with all registrations, applications to register and rights to apply for registration of any of the aforementioned rights and any licenses of or in respect of such rights.

"License Agreement" means the agreement under which a Licensee was granted a license to use the Software.

"Licensee" means any Standard Licensee and/or Registered Licensee and references in this Agreement to Licensee shall be to the relevant Licensee or Licensees given the context in which such reference is made.

"Media Check" means the tests and processes forming NCC Group's Media Check service, in so far as they can be applied to the Escrow Material.

"Medium" means the media upon which the deposited Escrow Material is stored.

"Order Form" means the order form setting out the details of the order placed with NCC Group for setting up this Agreement and/or a Deposit Account Agreement and/or the registration of a Licensee under this Agreement.

"Personal Data" shall have the meaning given to it in the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679).

"PHI" means "protected health information" as defined by the Health Insurance Portability and Accountability Act's implementing regulations (45 C.F.R. 160.103).

"Registered Licensee" means any person, firm, company or other entity:

- (i) to whom a license to use the Software has been granted;
- (ii) whom Licensor has confirmed in writing to NCC Group may be registered as a Licensee under this Agreement; and
- (iii) who has agreed to be bound by the terms and conditions of this Agreement by executing a completed Registration Agreement, forwarding the same to NCC Group and the receipt and registration of which has been acknowledged by NCC Group in writing to Licensor and Licensee,

and references in this Agreement to Registered Licensee shall be to the relevant Registered Licensee or Registered Licensees given the context in which such reference is made.

"Registration Agreement" means an agreement in the form set out in Appendix 2 to be signed by any company wishing to be a party to a Deposit Account Agreement or Deposit Account Agreements, as a Registered Licensee and, accordingly, to take the benefit of and be bound by the terms and conditions of the Agreement (save as varied in the Registration Agreement) including payment obligations as may be defined in the Registration Agreement.

"Release Purposes" means the purposes of understanding, maintaining, modifying and correcting the Software exclusively for and on behalf of the relevant Licensee together with such other purposes (if any) as are permitted under that Licensee's License Agreement.

"Software" means the software together with any updates and upgrades thereto and new versions thereof licensed to Licensee under the License Agreement details of which are set out in Schedule 1 of a Deposit Account Agreement.

"Source Code" means the computer programming code of the Software in human readable form.

"Standard Licensee" means a Licensee who is, subject to Section 14.5, joined as a beneficiary to, or removed as a beneficiary from, a Deposit Account by the Licensor in its sole and absolute discretion from time to time and at any time, which the Licensor does by completing and submitting to NCC Group a list in the form set out in Appendix 3.

"Standard Licensee List" means the list of Standard Licensees which is to be submitted to NCC Group every time one or more Standard Licensees is added to or removed from the list in accordance with Section 2.4.

"Tax" means any tax, levy, impost, duty, charge or fee, or penalty or interest thereon.

"Third Party Material" means Source Code which is not the confidential information and intellectual property of the Licensor or the Licensee.

"Verification" means the tests and processes forming NCC Group's verification services for verifying and/ or testing the Escrow Material in so far as they can be applied to the Escrow Material and/or such other tests and processes as may be agreed between the parties.

"Virtual Machine Deposit" means a deposit of the Escrow Material in a virtual machine format.

- 1.2 This Agreement shall be interpreted in accordance with the following:
 - 1.2.1 headings are for ease of reference only and shall not be taken into consideration in the interpretation of this Agreement;
 - 1.2.2 all references to Sections and Schedules are references to Sections and Schedules of this Agreement;
 - 1.2.3 all references to a party or parties are references to a party or parties to this Agreement; and
 - 1.2.4 all references to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder.
- 1.3 This Agreement is intended to be "supplementary" to the License Agreement within the meaning of Section 365(n) of the United States Bankruptcy Code ("Code"), 11 U.S.C. § 365(n). The License Agreement requires, or the Licensee or Licensor have otherwise agreed, that certain materials, including the Escrow Material, be deposited in escrow pursuant to the terms and conditions of this Agreement. All such Escrow Material is and shall be deemed to be "intellectual property" or "embodiment[s] of ... intellectual property," as defined and used in Sections 101(35)(A) and 365(n) of the Code, 11 U.S.C. §§ 101(35)(A) and 365(n).
- 1.4 If Licensor or its estate becomes subject to any bankruptcy or similar proceeding, Licensee shall, without prejudice to or limitation of any other rights or remedies, have the right to exercise all rights and elections (including all licenses, privileges, remedies, and protections) under this Agreement, the License Agreement, the Source Code, and all other applicable laws with respect to this Agreement, the License Agreement, and the respective subject matter of each of these agreements, including the Software, and Escrow Material.

2 Deposit Accounts, Standard Licensees and Registered Licensees

- 2.1 Each time that the Licensor wishes to deposit different Escrow Material under the terms of this Agreement, the Licensor and NCC Group must execute a completed Deposit Account Agreement containing the details of the Escrow Material to be deposited in accordance with the obligations contained in Section 3.
- 2.2 Each signed Deposit Account Agreement shall be supplemental to and be governed by the terms of this Agreement.
- 2.3 For the avoidance of doubt, if the Escrow Material to be deposited is an update to or development of Escrow Material already deposited under an existing Deposit Account, the deposit of such Escrow Material shall not require a new Deposit Account and shall be deposited under the relevant existing Deposit Account.
- 2.4 The Licensor may add or remove Standard Licensees as beneficiaries to one or more Deposit Accounts by completing and submitting to NCC Group a consolidated list of all Standard Licensees registered to each Deposit Account in the form set out in Appendix 3 every time it wishes to add or remove Standard Licensees. Any list provided must track changes to the previous list submitted by the Licensor. The Licensor may only add or remove Standard Licensees using the consolidated list. A Standard Licensee may terminate its own registration under one or more Deposit Accounts in accordance with Section 14.5. NCC Group shall be entitled to rely on the most recently received Standard Licensee List together with any terminations by Standard Licensees since the date of that list.
- 2.5 Registered Licensees may be added to one or more Deposit Accounts by forwarding to NCC Group a Registration Agreement signed by the Registered Licensee and the Licensor and such registration being confirmed in writing by NCC Group to Licensor and Licensee.
- 2.6 The Licensor shall ensure that the description of the Escrow Material in each of (i) the Deposit Account Agreement, (ii) the Registration Agreement and (iii) the Standard Licensee List all correspond with each other and the description on the Escrow Material when deposited.

3 Licensor's Duties and Warranties

- 3.1 The Licensor shall:
 - 3.1.1 deliver a copy of the Escrow Material for a given Software to NCC Group within thirty (30) days of the date NCC Group receives an executed Deposit Account Agreement;
 - 3.1.2 deliver a further copy of the Escrow Material to NCC Group each time that there is a change to the relevant Software;
 - 3.1.3 following completion of the NCC Group on-site or remote element of any Verification either deliver a copy of the Escrow Material that has been verified to NCC Group within seven (7) days of the completion of the on-site or remote element of the Verification or, with NCC Group's consent, provide a copy of the same to the consultant undertaking such Verification on behalf of NCC Group in each case so that it can be deposited (under the relevant Deposit Account or a new Deposit Account);
 - 3.1.4 ensure that each copy of the Escrow Material deposited with NCC Group comprises the Source Code of the latest version of the relevant Software used by each Licensee;
 - 3.1.5 within thirty (30) days after the anniversary of the last delivery of the Escrow Material deliver to NCC Group a replacement copy of the Escrow Material for each Software;
 - 3.1.6 deliver a replacement copy of the Escrow Material to NCC Group within fourteen (14) days of a notice given to it by NCC Group under the provisions of Section 5.1.4;
 - 3.1.7 deliver with each deposit of the Escrow Material the following information:
 - 3.1.7.1 Deposit Form containing the details of the deposit including the full name of the Software (i.e. the original product name and deposit account number as set out under Schedule 1 to the Deposit Account Agreement together with any new names given to the Software by the Licensor), version details, media type, backup command/software used, compression used, archive hardware and operating system details;
 - 3.1.7.2 password/encryption details required to access the Escrow Material; and
 - 3.1.7.3 where the deposit is a Virtual Machine Deposit for a specific Licensee, the details of the relevant Licensee;
 - 3.1.8 deliver with each deposit of the Escrow Material the following technical information (where applicable):
 - 3.1.8.1 documentation describing the procedures for building, compiling and installing the Software, including names and versions of the development tools;
 - 3.1.8.2 Software design information (e.g. module names and functionality);
 - 3.1.9 if requested in writing by a Licensee, deposit a backup copy of the object code of any third party software package required to access, install, build or compile or otherwise use the Source Code contained in the Escrow Material; and

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NonStandard US S&R Multi-LEE Deposit Account

- 3.1.10 if the Licensee requests or orders a Virtual Machine Deposit, deliver a further copy of the Escrow Material to NCC Group within a Virtual Machine Deposit.
- 3.2 If at any time there is more than one Licensee under this Agreement and those Licensees have different versions or releases of the Package then the Licenser shall ensure that all relevant versions of the Package are comprised in the Escrow Material that is delivered to NCC Group under Section 3.1. Subject to Section 3.3 the Licenser acknowledges that if a Licensee obtains a release under Section 7 that all of the Escrow Material held under the relevant Deposit Account will be released to that Licensee (including all versions and releases that are contained in it).
- 3.3 If a Licensee ("Requester") orders:
- 3.3.1 a Verification the Licenser will deliver a further copy of the Escrow Material to NCC Group at the end of such Verification or provide a copy of the same to the consultant undertaking the Verification on behalf of NCC Group; and
- 3.3.2 a Virtual Machine Deposit, the Licenser will deliver a further copy of the Escrow Material to NCC Group within a Virtual Machine Deposit.
- 3.4 In each case, such copy will be held by NCC Group on behalf of the Requester only and only the Requester (and no other Licensee) will be entitled to that copy of the Escrow Material in the event of a release under Section 6. Such rights to be in addition to the Requester's rights under Section 2.2 and the other provisions of this Agreement. However, if a Virtual Machine Deposit is made at the request of the Licenser and is identified as available to all Licensees this Section shall not apply and the Escrow Material shall be available to all Licensees.
- 3.5 Licenser warrants to both NCC Group and each Licensee at the time of each deposit of the Escrow Material with NCC Group that:
- 3.5.1 other than any third party object code referred to in Section 3.1.9 or any Third Party Material, it owns the Intellectual Property Rights in the Escrow Material;
- 3.5.2 in respect of any Third Party Material, it has been granted valid and ongoing rights under license by the third party owner(s) thereof to deal with such Third Party Material in the manner anticipated under this Agreement and any Deposit Account Agreement and that the Licenser has the express authority of such third party owner(s) to deposit the Third Party Material under this Agreement as evidenced by a signed letter of authorization in the form required, and if requested, by NCC Group;
- 3.5.3 the Escrow Material deposited under Section 3.1 contains all information in human-readable form (except for any third party object code deposited pursuant to Section 3.1.9) and is on suitable media to enable a reasonably skilled programmer or analyst to understand, maintain, modify and correct the Software;
- 3.5.4 in respect of any third party object code that the Licenser, at its option, or, at the request of a Licensee, deposits with NCC Group in conjunction with the Escrow Material pursuant to Section 3.1.9, it has the full right and authority to do so;
- 3.5.5 the Escrow Material does not contain any PHI and Licenser acknowledges that PHI may only be deposited under a HIPAA Escrow Agreement (which can be provided upon request); and
- 3.5.6 there is no Personal Data contained within the Escrow Material held by NCC Group.
- 3.6 The Licenser agrees and confirms that each time it makes a physical deposit of Escrow Material under this Agreement it transfers ownership of the Medium on which the Escrow Material is stored to NCC Group.
- 3.7 The Licenser agrees that each time it makes an electronic deposit of Escrow Material under this Agreement and NCC Group downloads that Escrow Material onto a Medium, NCC Group shall own the Medium on which the Escrow Material is stored.
- 4 Licensee's Responsibilities and Undertakings**
- 4.1 The Licensee shall notify NCC Group of any change to the Software that necessitates a replacement deposit of the Escrow Material
- 4.2 In the event that the Escrow Material deposited under one or more Deposit Accounts is released to a Licensee under Section 7, that Licensee shall:
- 4.2.1 keep the Escrow Material confidential at all times;
- 4.2.2 use the Escrow Material only for the Release Purposes;
- 4.2.3 not disclose the Escrow Material to any person or third party except such of its employees or contractors who need to know the same for the Release Purposes or any other party as permitted under the License Agreement. In the event that Escrow Material is disclosed to its employees or contractors or a third party, the applicable Licensee shall ensure that they are bound by the same confidentiality obligations as are contained in this Section 4.2;
- 4.2.4 hold all media containing the Escrow Material in a safe and secure environment when not in use; and
- 4.2.5 forthwith destroy the Escrow Material should the Licensee cease to be entitled to use the relevant Software under the terms of the relevant License Agreement.

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4.3 In the event that NCC Group releases any Escrow Material to a Standard Licensee, the Standard Licensee shall be required, as a condition of release, to sign an undertaking to confirm its agreement to the obligations contained in Section 4.2.

4.4 In the event that the Escrow Material is released to a Licensee under Section 7, it shall be the responsibility of the relevant Licensee to obtain the necessary licenses to utilize the third party object code and/or any Third Party Material deposited by the Licensors pursuant to Section 3.1.9.

5 NCC Group's Duties

5.1 NCC Group shall:

5.1.1 at all times during the term of this Agreement, retain the latest deposit of the Escrow Material in a safe and secure environment;

5.1.2 notify the Licensors and each relevant Licensee of the acceptance of any Registration Agreement;

5.1.3 inform the Licensors and each relevant Licensee of the receipt of any deposit of the Escrow Material by sending to all of them a copy of the Media Check report or Verification report (as the case may be) generated from the testing processes carried out under Section 11 provided that only the Licensors and where applicable the Requester, will receive a copy of a notice or report in respect of any Verification and any resultant deposit; and

5.1.4 notify the Licensors and each relevant Licensee if it becomes aware at any time during the term of this Agreement that the copy of the Escrow Material held by it has been lost, damaged or destroyed so that a replacement may be obtained.

5.2 If NCC Group becomes aware that the Licensors has not deposited the Escrow Material under a Deposit Account with NCC Group when required to do so under the terms of this Agreement, then NCC Group may notify the relevant Licensee of such failure (but it is not obligated to do so and shall not be responsible for procuring such deposit from the Licensors).

5.3 NCC Group has the right to make such copies of the Escrow Material as may be necessary solely for the purposes of this Agreement.

6 Payment

6.1 The Licensors and each Licensee shall pay NCC Group's standard fees and charges as published from time to time or as otherwise agreed, in the proportions set out in Schedule 1. NCC Group's fees as published are exclusive of any applicable Tax.

6.2 If NCC Group is required to perform any additional or extraordinary services as a result of being an escrow agent including intervention in any litigation or proceeding, NCC Group shall receive reasonable compensation for such services and be reimbursed by the requesting party for all costs incurred, including without limitation, its reasonable attorney's fees.

6.3 NCC Group shall be entitled to review and vary its standard fees and charges for its services under this Agreement from time to time but no more than once a year and only upon forty-five (45) days written notice to the parties.

6.4 Except in the case of release as stated in Section 7, all invoices are payable within thirty (30) days from the date of invoice. Interest shall accrue at the lesser of 1.5% per month or the maximum amount permitted by applicable law for any fees that are undisputed by the paying party and remain unpaid for more than thirty (30) days past the due date of the applicable invoice. The Licensors or the Licensee(s) (as applicable) shall reimburse NCC Group for all costs incurred in collecting any overdue payments and related interest, including, without limitation, attorneys' fees, legal costs, court costs and collection agency fees.

6.5 The Licensors and each Licensee shall make all such payments due under this Agreement to NCC Group without withholding or deduction of, or in respect of, any Tax unless required by law. If any such withholding or deduction is required, the Licensors or the relevant Licensee (as applicable) shall, when making the payment to which the withholding or deduction relates, pay to NCC Group such additional amount as will ensure that NCC Group receives the same total amount that it would have received if no such withholding or deduction had been required.

6.6 NCC Group shall have no obligations under this Agreement until the initial invoice has been paid in full.

7 Release Procedures

7.1 Subject to: (i) the remaining provisions of this Section 7 and (ii) the receipt by NCC Group of its release fee and any other fees and interest (if any) due under this Agreement, NCC Group will release the Escrow Material deposited under the relevant Deposit Accounts to which the Licensee is a party (whether as a Standard Licensee or a Registered Licensee) to a duly authorized representative of the relevant Licensee if any of the following events ("Release Event(s)") occur:

7.1.1 a receiver, trustee, or similar officer is appointed for the business or property of the Licensors; or

7.1.2 the Licensors files a petition in bankruptcy, files a petition seeking any reorganization (without confirming immediately in writing to the relevant Licensee that it will continue to maintain the Software in accordance with the terms of the License Agreement or any applicable maintenance agreement), makes an arrangement, composition, or similar relief under any law regarding insolvency or relief for debtors, or makes an assignment for the benefit of creditors; or

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- 7.1.3 any involuntary petition or proceeding under bankruptcy or insolvency laws is instituted against the Licensor and not stayed, enjoined, or discharged within sixty (60) days; or
 - 7.1.4 the Licensor takes any corporate action authorizing any of the foregoing; or
 - 7.1.5 any similar or analogous proceedings or event to those in Sections 7.1.1 to 7.1.3 above occurs in respect of the Licensor within any jurisdiction outside the United States of America; or
 - 7.1.6 the Licensor ceases to carry on its business or the part of its business which relates to the Software; or
 - 7.1.7 the Licensor or, where relevant, its agent, parent, subsidiary or associated company is in material breach of its obligations as to maintenance or modification of the Software under the License Agreement or any maintenance agreement entered into in connection with the Software and has failed to remedy such default notified by the Licensee to the Licensor within a reasonable period.
- 7.2 A Licensee must notify NCC Group of the Release Event specified in Section 7.1 by delivering to NCC Group a notice in writing ("Notice") declaring that such Release Event has occurred and specifying the Deposit Account(s) so affected, and setting out the facts and circumstances of the Release Event, that the relevant License Agreement and any maintenance agreement, if relevant, for the Software was still valid and effective up to the occurrence of such Release Event and exhibiting any applicable supporting documentary evidence. Without prejudice to Sections 12.4 and 12.5 NCC Group shall be fully entitled to rely and act upon the Notice and shall not be required to verify its contents, truth or accuracy.
- 7.3 Upon receipt of a Notice from a Licensee claiming that a Release Event has occurred:
- 7.3.1 NCC Group shall submit a copy of the Notice to the Licensor by courier or other form of guaranteed delivery; and
 - 7.3.2 unless within fourteen (14) calendar days after the date of dispatch of the Notice by NCC Group, NCC Group receives a counter-notice in writing from the Licensor stating that in their view no such Release Event has occurred or, if appropriate, that the event or circumstance giving rise to the Release Event has been rectified,
- NCC Group will release the Escrow Material deposited under the relevant Deposit Accounts to which the Licensee is party and which the Licensee has requested, to the Licensee for its use for the Release Purposes.
- 7.4 Upon receipt of the counter-notice from the Licensor under Section 7.3.2, NCC Group will send a copy of the counter-notice to the Licensee by courier or other form of guaranteed delivery.
- 7.5 Within ninety (90) calendar days of dispatch of the copy of the counter-notice to the relevant Licensee by NCC Group, that Licensee may give notice to NCC Group that it wishes to invoke the dispute resolution procedure under Section 8 (and such notice shall be known as a "Demand"). Upon receipt of a Demand, NCC Group will send a copy of the Demand to the Licensor by courier or other form of guaranteed delivery.
- 7.6 If, within ninety (90) calendar days of dispatch of the counter-notice by NCC Group to the relevant Licensee, NCC Group has not received a Demand, the Notice submitted by that Licensee will be deemed to be no longer valid and that Licensee shall be deemed to have waived its right to release of the Escrow Material deposited under the relevant Deposit Accounts to which the Licensee is party and which the Licensee has requested for the particular reason or event specified in the original Notice. In such circumstances, this Agreement shall continue in full force and effect.
- 7.7 For the avoidance of doubt, where a Release Event has occurred under Section 7.1 in respect of as Licensee, a subsequent assignment of the Intellectual Property Rights in the Escrow Material shall not prejudice the relevant Licensee's right to release of the Escrow Material and its use for the Release Purposes.
- 7.8 If a Release Event has occurred under Section 7.1 in respect of a Licensee, the subsequent termination of that Licensee's License Agreement shall not prejudice the Licensee's right to release of the Escrow Material and its use for the Release Purposes provided that the other provisions of this Section 7 have been complied with.
- 7.9 For the avoidance of doubt, each Licensee must make a separate release request under this Section 7 and (if necessary) separately follow the dispute resolution procedure in relation to disputed release requests under Section 7.
- 8 Disputes regarding Release Event(s)**
- 8.1 All disputes regarding whether the Release Event(s) specified in the Notice occurred before the Licensee delivered the Notice to NCC Group shall be decided by one (1) arbitrator. The place of the arbitration shall be Atlanta, Georgia. If the Licensor and Licensee have not agreed on an arbitrator within seven (7) days after the Licensor receives the Demand from NCC Group, the American Arbitration Association (AAA) shall appoint an arbitrator within ten (10) days of receipt of a request to appoint an arbitrator, which may be filed by either the Licensor or Licensee. The arbitrator's agreement to the deadlines set forth in this Section 8 shall be a condition to the appointment as arbitrator, but failure to adhere to these time limits shall not be a basis for challenging the award. NCC Group shall not be party to the dispute resolution proceedings under this Section 8.
- 8.2 Within seven (7) days of the appointment of the arbitrator, the Licensor and the Licensee shall each provide written submissions to the arbitrator, together with all documentary evidence in their possession in support of their claim.
- 8.3 Based solely on the written submissions of the Licensor and the Licensee, and without the need for a hearing, the arbitrator shall render and deliver his or her award to the Licensor, the Licensee and NCC Group within fourteen (14) days or as soon as practicable thereafter of receiving the written submissions from the Licensor and the Licensee. The

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Licensee and the Licensors may agree to extend this time limit or the arbitrator may do so in its discretion if he or she determines that the interest of justice so requires.

- 8.4 The award shall be limited to a determination of whether or not there existed a Release Event at the time Licensee delivered the Notice to NCC Group and, where the Licensors claim within the timescales specified in Section 7.3.2 that the Release Event has been rectified and the Licensee does not agree, to a determination of whether or not the Release Event has in fact been rectified. In addition, the arbitrator shall award the prevailing party its attorneys' fees and costs, including the fees and costs of the arbitrator.
- 8.5 The arbitral award shall be final and binding upon the parties hereto. If the arbitrator finds that a Release Event existed at the time of delivery of the Notice to NCC Group, NCC Group is hereby authorized to release and deliver the Escrow Material deposited under the relevant Deposit Account to which the Licensee is party and which the Licensee has requested to the Licensee within 5 Business Days of the decision being notified by the arbitrator to the parties. If the arbitrator finds to the contrary, then NCC Group shall not release the Escrow Material and shall continue to hold the Escrow Material in accordance with the terms of this Agreement.
- 8.6 The parties agree that the arbitration provided in this Section 8 shall not be consolidated or joined with any other proceeding regarding disputes between or among any of the parties.

9 Confidentiality

- 9.1 Without prejudice to Section 7, the Escrow Material shall remain at all times the confidential and intellectual property of its owner.
- 9.2 In the event that NCC Group releases any Escrow Material to a Licensee, that Licensee shall be permitted to use the Escrow Material only for the Release Purposes.
- 9.3 Subject to Section 9.4 and the remainder of this Section 9.3, NCC Group agrees to keep all Confidential Information relating to the Escrow Material and/or the Software that comes into its possession or to its knowledge under this Agreement in strict confidence and secrecy. NCC Group further agrees not to make use of such information and/or documentation other than for the purposes of this Agreement and, unless the parties should agree otherwise in writing and subject to Section 9.4, will not disclose or release it other than in accordance with the terms of this Agreement.
- 9.4 NCC Group may release any Escrow Material to the extent that it is required by applicable federal, state or local law, regulation, court order, judgment, decree or other legal process, provided that, unless prohibited by the terms of the order or the relevant law or regulation, NCC Group has notified the Licensors and the Licensee prior to such required release, has given the Licensors and/or the Licensee an opportunity to contest (at their own expense) such required release, within the time parameters mandated by such applicable regulation, court order, judgment, decree or other legal process. NCC Group is hereby expressly authorized in its sole discretion to obey and comply with all orders, judgments, decrees so entered or issued by any court, without the necessity of inquiring as to the validity of such order, judgment or decree, or the court's underlying jurisdiction. Where NCC Group obeys or complies with any such order, judgment or decree, NCC Group shall not be liable to the Licensee, the Licensors or any third party by reason of such compliance, notwithstanding that such order, judgment or decree may subsequently be reversed, modified or vacated.
- 9.5 Any request by a Licensee under (i) Section 3.1.10 for a Virtual Machine Deposit; and (ii) 11.3 for a Verification shall not be disclosed to any other Licensee(s) except where the requesting Licensee agrees.

10 Intellectual Property Rights

- 10.1 The release of any Escrow Material to a Licensee will not act as an assignment of any Intellectual Property Rights that the Licensors or any third party possesses in the Escrow Material.
- 10.2 The Intellectual Property Rights in the Media Check report and any Verification report shall remain vested in NCC Group. The Licensors and each Licensee shall be granted a non-exclusive right and license to use the Media Check report for the purposes of this Agreement and their own internal purposes only. The Licensors and the party who commissioned the Verification shall each be granted a non-exclusive right and license to use the Verification report for the purposes of this Agreement and their own internal purposes only. The Licensors and where applicable the Requester shall each be granted a non-exclusive right and license to use the Verification report for the purposes of this Agreement and their own internal purposes only. The Licensors and where applicable the Requester shall each be granted a non-exclusive right and license to use the Verification report for the purposes of this Agreement and their own internal purposes only.

11 Media Check and Verification

- 11.1 NCC Group shall bear no obligation or responsibility to any party to this Agreement or person, firm, company or entity whatsoever to determine the relevance, completeness, accuracy, operation, effectiveness, functionality or any other aspect of any Escrow Material received by NCC Group under this Agreement.
- 11.2 As soon as reasonably practicable after any Escrow Material has been deposited with NCC Group, NCC Group shall perform a Media Check on that Escrow Material.
- 11.3 The Licensors or any Licensee may request that NCC Group carry out a Verification and the Licensors and the relevant Licensee shall co-operate in facilitating such Verification. NCC Group shall at its absolute discretion decide whether or not to undertake any Verification requested and may attach such requirements thereto as it considers appropriate. Subject to Section 11.4, NCC Group's prevailing fees and charges for the Verification and all reasonable expenses incurred by NCC Group in carrying out the Verification shall be payable by the requesting party.

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- 11.4 If any Escrow Material fails to satisfy NCC Group's Verification tests as a result of being defective or incomplete in content, NCC Group's fees, charges and expenses in relation to the Verification tests shall be paid by the Licensor.
- 11.5 Should any Escrow Material deposited fail to satisfy NCC Group's Media Check under Section 11.2, the Licensor shall, within fourteen (14) days of the receipt of the notice of test failure from NCC Group, deposit such new, corrected or revised Escrow Material as shall be necessary to ensure its compliance with its warranties and obligations in Section 3. If the Licensor fails to make such deposit of the new, corrected or revised Escrow Material as requested in accordance with this Section 11.5, NCC Group will inform the relevant Licensee that the Escrow Material has failed the Media Check and retain such deposit in accordance with Section 5.1.1.
- 11.6 Should the Escrow Material deposited fail to satisfy NCC Group's Verification tests under Section 11.3, the Licensor shall, within fourteen (14) days of the receipt of the notice of test failure from NCC Group, deposit such new, corrected or revised Escrow Material as shall be necessary to ensure its compliance with its warranties and obligations in Section 3. If the Licensor fails to make such deposit of the new, corrected or revised Escrow Material, as requested in accordance with this Section 11.6, NCC Group will issue a report to the relevant Licensee(s) detailing the problem with the Escrow Material as revealed by the relevant tests.
- 11.7 The Licensor acknowledges that as part of the Verification services NCC Group may test the Escrow Material and hereby consents to the performance of such services ordered pursuant to this Agreement.
- 11.8 NCC Group's then current terms and conditions in relation to Verification ("Verification Terms") will (unless NCC Group expressly agrees otherwise in writing) apply to any Verification undertaken by NCC Group in connection with this Agreement.
- 12 NCC Group's Liability**
- 12.1 Nothing in this Section 12 excludes or limits the liability of NCC Group for gross negligence or intentional misconduct.
- 12.2 Subject to Section 12.1, NCC Group shall not be liable for:
- 12.2.1 any loss or damage caused to either Licensor or any Licensee except to the extent that such loss or damage is caused by the negligent acts or negligent omissions of or a breach of any contractual duty by NCC Group, its employees, agents or sub-contractors, and in such event, NCC Group's total liability with regard to all claims arising under or by virtue of this Agreement or in connection with the performance or contemplated performance of this Agreement, shall not exceed the sum of \$250,000 (two hundred and fifty thousand US dollars); and
- 12.2.2 any special, indirect, incidental or consequential damages whatsoever.
- 12.3 NCC Group shall not be responsible in any manner whatsoever for any failure or inability of the Licensor or any Licensee to perform or comply with any provision of this Agreement.
- 12.4 NCC Group shall not be liable in any way to the Licensor or the Licensee for acting in accordance with the terms of this Agreement and specifically (without limitation) for any upon any notice, written request, waiver, consent, receipt, statutory declaration or any other document furnished to it pursuant to and in accordance with this Agreement.
- 12.5 NCC Group shall not be required to make any investigation into, and shall be entitled in good faith without incurring any liability to the Licensor or any Licensee to assume (without requesting evidence thereof) the validity, authenticity, veracity and due and authorized execution of any documents, written requests, waivers, consents, receipts, statutory declarations or notices received by it in respect of this Agreement.
- 12.6 NCC Group shall not be liable in any way to the Licensor or any Licensee for acting, subject to any terminations pursuant to Section 14.5, in reliance on the Standard Licensee List referred to in Section 2.4 together with any Registration Agreements executed and confirmed by NCC Group.
- 12.7 Nothing in this Agreement shall impose any liability on NCC Group in respect of non-performance of its obligations under this Agreement to the extent such non-performance is due to the Licensee's or any Licensor's acts, omissions, negligence or default.
- 13 Indemnity**
- 13.1 Except for any claim falling within the provisions of Section 12.1, or any claim in respect of which NCC Group is found by a court of competent jurisdiction to have breached this Agreement or been negligent, the Licensor and the Licensee involved in the dispute or litigation jointly and severally agree at all times to indemnify and hold harmless NCC Group in respect of all of its legal and all other costs (including, without limitation, NCC Group's reasonable attorney's fees), fees and expenses incurred directly or indirectly as a result of being brought into or otherwise becoming involved in any form of dispute resolution proceedings or any litigation of any kind between, or involving, the Licensor and/or the relevant Licensee and/or any third party in relation to this Agreement to the extent that this Agreement does not otherwise provide for reimbursement of such costs.
- 13.2 The Licensor shall assume all liability and shall at all times indemnify and hold harmless NCC Group and its officers, agents, sub-contractors and employees from and against any and all liability, loss, damages, costs, legal costs (including reasonable attorney's fees), professional and other expenses and any other liabilities of whatever nature, awarded against or agreed to be paid or otherwise suffered, incurred or sustained by NCC Group, whether direct, indirect or consequential as a result of or in connection with any claim by any third party(s) for alleged or actual infringement of Intellectual Property Rights arising out of or in connection with all and any acts or omissions of NCC Group in respect of the Escrow Material as contemplated under this Agreement.

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- 13.3 The Licensors shall, where NCC Group has acted pursuant to Section 12.6 above, assume all liability and shall at all times indemnify and hold harmless NCC Group and its officers, agents, sub-contractors and employees from and against any and all liability, loss, damages, costs, legal costs (including reasonable attorney's fees), professional and other expenses and any other liabilities of whatever nature, awarded against or agreed to be paid or otherwise suffered, incurred or sustained by NCC Group, whether direct, indirect or consequential as a result of or in connection with any claim by a Licensors, Licensee or any third party(s) that NCC Group has either failed to release some or all of the correct Escrow Material on a Release Event or has released Escrow Material that it should not have released.
- 14 Term and Termination**
- 14.1 This Agreement and any Deposit Account Agreement shall continue until terminated in accordance with this Section 14.
- 14.2 If the Licensors or a Licensee, as the case may be, fails to pay an invoice addressed to it for services under this Agreement and/or any Deposit Account Agreement in accordance with Section 5, NCC Group reserves the right to give that party written notice to pay the outstanding invoice within thirty (30) days. If a Licensee has not paid its invoice before the expiry of the thirty (30) day notice period, NCC Group shall have the right to terminate this Agreement in respect of that Licensee immediately on written notice. If the Licensors has not paid its invoice before the expiry of the thirty (30) day notice period, NCC Group may give the relevant Licensee (where the invoice is related to a specific Licensee) or all Licensees a period of thirty (30) days to pay the Licensors' invoice. If the Licensors' invoice has not been paid by the expiry of the thirty (30) day optional payment period given to a Licensee, NCC Group shall have the right to terminate this Agreement and the relevant Deposit Account Agreement immediately on written notice in respect of the relevant Licensee(s) or in its entirety (as appropriate). Any amounts owed by the Licensors but paid by a Licensee will be recoverable by the relevant Licensee direct from the Licensors as a debt and, if requested, NCC Group shall provide appropriate documentation to assist in such recovery.
- 14.3 Notwithstanding any other provision of this Section 14, NCC Group may terminate this Agreement and/or any Deposit Account Agreement by giving thirty (30) days written notice to the Licensors and each Licensee.
- 14.4 A Standard Licensee or Registered Licensee may terminate any and all Deposit Account Agreements in respect of itself only at any time by giving sixty (60) days prior written notice to NCC Group.
- 14.5 If NCC Group discovers that a Release Event has occurred and a Licensee has not exercised its right to claim for release of the Escrow Material under Section 7.2, NCC Group shall have the right to terminate this Agreement and/or any Deposit Account Agreement in respect of the relevant Licensee (or if the Release Event applies to all Licensees, then this Agreement in its entirety) upon thirty (30) days' written notice to the Licensors and the relevant Licensee(s). The relevant Licensee shall have the option of applying for release in accordance with Section 7 during this notice period, but if it fails to do so, upon the expiry of this notice period, this Agreement and/or any Deposit Account Agreement shall automatically terminate with respect to the relevant Licensee(s) or in its entirety (as appropriate).
- 14.6 If the License Agreement with a Registered Licensee has expired or has been lawfully terminated, then the relevant Registered Licensee shall give notice to NCC Group within fourteen (14) days thereof to terminate its interest under the relevant Deposit Account Agreement(s), failing which, the Licensors shall be entitled to give written notice to NCC Group to terminate the relevant Registered Licensee's interests under the relevant Deposit Account Agreement(s). Upon receipt of such a notice from the Licensors, NCC Group shall notify the relevant Registered Licensee of the Licensors' notice to terminate. Unless within thirty (30) days of NCC Group giving such notice to Registered Licensee, NCC Group receives a counter-notice from the relevant Registered Licensee either (i) disputing the termination of the License Agreement; or (ii) requesting release pursuant to Section 7, then the relevant Registered Licensee shall be deemed to have consented to such termination and the relevant Registered Licensee's rights under the relevant Deposit Account Agreement shall immediately automatically terminate. If the relevant Registered Licensee does provide NCC Group with a counter-notice, then NCC Group shall notify the Licensors and the relevant Registered Licensee's rights under the Deposit Account Agreement shall not terminate but shall continue in full force and effect pending resolution of the dispute. Any disputes arising under this Section shall be dealt with in accordance with the dispute resolution procedure in Section 8 except that the question to be determined by the arbitrator will be whether or not the License Agreement has expired or been lawfully terminated.
- 14.7 Subject to Section 14.6, the Licensors may only terminate the interests of any Registered Licensee under a Deposit Account Agreement with the written consent of that Registered Licensee and then only on not less than sixty (60) days' prior written notice to NCC Group.
- 14.8 Subject to Section 14.6, Licensors may only terminate this Agreement or a Deposit Account Agreement in its entirety with the written consent of all Registered Licensees and then only on not less than sixty (60) days' prior written notice to NCC Group.
- 14.9 For thirty (30) days from the date of termination of this Agreement and/or a Deposit Account Agreement pursuant to Sections 14.2 to 14.8 inclusive NCC Group will make the Escrow Material available for collection by the Licensors or its agents from the premises of NCC Group during office hours. After such thirty (30) day period NCC Group will destroy the Escrow Material.
- 14.10 Licensors may terminate the interests of any Standard Licensee under a Deposit Account Agreement at any time by submitting to NCC Group a new list in the form set out in Appendix 3.
- 14.11 A Deposit Account Agreement shall automatically immediately terminate in respect of a Licensee upon release of the Escrow Material to that Licensee in accordance with Section 7.

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- 14.12 If this Agreement or a Deposit Account Agreement is superseded and replaced by a new agreement in respect of the Escrow Material, this Agreement and/or the relevant Deposit Account Agreement shall, upon the coming into force of the new agreement in respect of a Licensee, automatically terminate in respect of that Licensee. When this Agreement and/or a Deposit Account Agreement has been terminated in respect of all Licensees who are registered under it, it shall immediately terminate in its entirety. The relevant party or parties shall request NCC Group to either transfer the Escrow Material to the new agreement or ask the Licensor under the new agreement to deposit new material. If new material is deposited, upon its receipt, NCC Group shall, unless otherwise instructed, destroy the Escrow Material.
- 14.13 The termination of this Agreement and/or a Deposit Account Agreement in respect of a Licensee shall be without prejudice to the continuation of this Agreement and/or a Deposit Account Agreement in respect of any other Licensees.
- 14.14 If any terminations of Licensees' interests under this Agreement and/or a Deposit Account Agreement result in there being no Licensees registered under this Agreement and/or a Deposit Account Agreement, unless otherwise instructed by the Licensor, this Agreement and/or a Deposit Account Agreement will continue and the Escrow Material will be retained by NCC Group pending registration of other Licensees.
- 14.15 The provisions of Sections 1, 4.2, 4.4, 6, 9, 10, 11.1, 12, 13, 14.15 to 14.17 (inclusive) and 15 shall continue in full force after termination of this Agreement.
- 14.16 On and after termination of this Agreement and/or a Deposit Account Agreement, the Licensor and/or the relevant Licensee(s) (as appropriate) shall remain liable to NCC Group for payment in full of any fees and interest which have become due but which have not been paid as at the date of termination.
- 14.17 The termination of this Agreement and/or a Deposit Account Agreement, however arising, shall be without prejudice to the rights accrued to the parties prior to termination.
- 14.18 A Licensee may by written notice to NCC Group unilaterally revoke any termination notice served by it at any time prior to the expiry of such termination notice.
- 15 General**
- 15.1 Licensor and each Licensee shall notify NCC Group, within thirty (30) days of its occurrence, of any of the following:
- 15.1.1 any change of name of the individual contact(s) for this Agreement and/or a Deposit Account Agreement, such notice to include the new contact name, email address, correspondence address and telephone number;
 - 15.1.2 a change of its name, principal office; and
 - 15.1.3 any material change in its circumstances that may affect the validity or operation of this Agreement or a Deposit Account Agreement,
- NCC Group shall be entitled to contact any party to this Agreement (including Standard Licensees) as required to enable it to provide its services under this Agreement, including, but not limited, to verify that it has up-to-date contact details.
- 15.2 Each party warrants that it has full capacity and authority to enter into and to perform this Agreement, and that in entering into this Agreement and performing its obligations under it, it is not and will not at any time be in breach of any of its express or implied obligations to any third party.
- 15.3 This Agreement shall be deemed entered into in Arizona and will be governed by and construed according to the laws of the state of Arizona, excluding that body of law known as conflict of law. The parties agree that any dispute arising under this Agreement, except as provided in Section 8, will be resolved in the state or federal courts in Phoenix, Arizona and the parties hereby expressly consent to the jurisdiction thereof. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT.
- 15.4 This Agreement and the relevant Deposit Account Agreement together with any relevant Order Form, the Deposit Form and, in respect of each Registered Licensee, their Registration Agreement and in respect of each Standard Licensee, the inclusion of them in the Appendix 3 list and the Verification Terms (where applicable) represent the whole agreement relating to the escrow arrangements between NCC Group, and the other parties in relation to the Software and shall supersede all prior agreements, discussions, arrangements, representations, negotiations and undertakings. In the event of any conflict between these documents, the following order of precedence shall apply: (i) the Verification Terms (where applicable); then (ii) in respect of each Licensee, their Registration Agreement; then (iii) the Deposit Account Agreement; then (iv) this Agreement; then (v) the Deposit Form; then (vi) the Order Form; then (vii) any other document incorporated by reference.
- 15.5 Unless the provisions of this Agreement otherwise provide, any notice or other communication required or permitted to be given or made in writing hereunder shall be validly given or made if delivered by hand or courier or if dispatched by nationally recognized courier addressed to the address specified for the parties in this Agreement and the relevant Deposit Account Agreement or their Registration Agreement (or such other address as may be notified to the parties from time to time) or if sent by electronic mail to an email address as notified to the parties from time to time and shall be deemed to have been received:
- (i) if delivered by hand or courier, at the time of delivery;

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- (ii) if sent by nationally recognized courier, two (2) Business Days after mailing (six (6) Business Days after mailing if recipient is overseas); or
 - (iii) if sent by electronic mail on a Business Day before 4.30pm (PST), on that day or, in any other case, on the next Business Day.
- 15.6 No party shall assign, transfer or subcontract this Agreement or any rights or obligations hereunder without the prior written consent of the other parties, except where: (i) a party merges, is acquired or has substantially all of its assets acquired and the new entity or acquirer agrees to assume all of their obligations and liabilities under this Agreement and the relevant Deposit Account Agreement; or (ii) NCC Group sub-contracts or assigns its rights or obligations to its Affiliates or a third party approved by NCC Group. NCC Group shall ensure that any such Affiliate or aforementioned third party is bound by the same confidentiality obligations as are contained in Section 9 and shall be responsible and liable for the acts and omissions of such Affiliate to the same extent as if such acts or omissions were by NCC Group.
- 15.7 This Agreement shall be binding upon and survive for the benefit of the successors in title and permitted assigns of the parties.
- 15.8 If any provision of this Agreement is declared too broad in any respect to permit enforcement to its full extent, the parties agree that such provision shall be enforced to the maximum extent permitted by law and that such provision shall be deemed to be varied accordingly. If any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, or unenforceable, it shall, to the extent of such illegality, invalidity or unenforceability, be deemed severable and the remaining part of the provision and the rest of the provisions of this Agreement shall continue in full force and effect.
- 15.9 Except as expressly provided in this Agreement, no amendment or variation of this Agreement or a Deposit Account Agreement shall be effective unless in writing and signed by a duly authorized representative of each of the parties to it.
- 15.10 NCC Group shall, on request by Licensor or Standard or Registered Licensee, provide a copy of this Agreement to the relevant Standard or Registered Licensee(s) stated in the request.
- 15.11 The parties shall not be liable to each other or be deemed to be in breach of this Agreement by reason of any delay in performing, or failure to perform, any of their obligations under this Agreement if the delay or failure was for a reason beyond that party's reasonable control (including, without limitation, fire, flood, explosion, epidemic, riot, civil commotion, any strike, lockout or other industrial action, act of God, war or warlike hostilities or threat of war, terrorist activities, accidental or malicious damage, or any prohibition or restriction by any governments or other legal authority which affects this Agreement and which is not in force on the date of this Agreement). A party claiming to be unable to perform its obligations under this Agreement (either on time or at all) in any of the circumstances set out above must notify the other parties of the nature and extent of the circumstances in question as soon as practicable. If such circumstances continue for more than six months, any of the other parties shall be entitled to terminate this Agreement by giving one month's notice in writing.
- 15.12 No waiver by any party of any breach of any provisions of this Agreement shall be deemed to be a waiver of any subsequent or other breach and, subject to Section 7.6, no failure to exercise or delay in exercising any right or remedy under this Agreement shall constitute a waiver thereof.
- 15.13 This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- 15.14 The Licensor and each Licensee warrant to NCC Group that as at the date of this Agreement it is not subject to any sanction, embargo or equivalent measure imposed by the laws of any jurisdiction or any union of jurisdictions (as "Sanctions") whether by virtue of such Sanctions being imposed on it individually or by virtue of it being resident in a certain jurisdiction or operating in a certain sector. If, during the term of this Agreement, the Licensor or a Licensee becomes subject to any Sanction it will immediately notify NCC Group in writing.
- 15.15 The Licensor and the relevant Licensee jointly and severally warrant to NCC Group that the Escrow Material (including, without limitation, the receipt by NCC Group of the Escrow Material or the taking of any action by NCC Group in relation to the Escrow Material that is contemplated by this Agreement including the receipt, holding, testing and/or releasing of the Escrow Material (together the "NCC Actions")) are not, and to the best of their knowledge and belief are not expected to become, subject to any import, re-import, export or re-export controls, laws or regulations in any country that the Escrow Material may be exported from, held in or delivered or released into under this Agreement ("Export Control Laws"). If at any time during the term of this Agreement, the Escrow Material or the NCC Actions become subject to Export Control Laws the Licensor and the relevant Licensee shall immediately notify NCC Group, providing all relevant details. Without prejudice to Section 15.11, NCC Group shall have no obligation to undertake any NCC Actions in relation to the Escrow Material if to do so would put it in breach (or potential breach) of Export Control Laws and shall not be required to obtain any license or other permission under Export Control Laws.
- 15.16 The Licensor and the relevant Licensee warrant to NCC Group that in providing or disclosing any Personal Data in connection with this Agreement it has provided or disclosed such Personal Data in accordance with all applicable Data Protection Legislation and that it has collected and transferred such Personal Data to NCC Group in accordance with the Data Protection Legislation. In particular, each of the Licensor and the relevant Licensee warrants and represents that it has obtained any relevant consent to such collection and transfer and the processing of the Personal Data by NCC Group in the execution of this Agreement. Each of the Licensor and relevant Licensee shall indemnify NCC Group in respect of all direct, indirect and consequential losses, damages, costs, claims, proceedings, expenses and liabilities (including

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reasonable legal fees, other professional costs and costs of enforcement) incurred by NCC Group and its Affiliates arising out of or in connection with a breach of this Section 15.16.

- 15.17 NCC Group is responsible for complying with all laws that are generally applicable to an escrow agent operating in the United States of America. If however, the content of the Escrow Material is such that additional laws or regulations are imposed on NCC Group by virtue of it receiving, holding, testing or releasing such Escrow Material specifically then the Licensor and the Licensees shall be jointly and severally responsible for notifying NCC Group of all such additional laws and regulations.
- 15.18 NCC Group is committed to ensuring that there is no modern slavery or human trafficking in its supply chains or in any part of its business and its Anti Slavery and Human Trafficking Statement and Anti Slavery Policy are available upon request.
- 15.19 Without prejudice to Section 15.11, if any of NCC Group's obligations under this Agreement becomes illegal, prohibited or otherwise unlawful then NCC Group shall be relieved of such obligation unless and until such obligation becomes permitted.
- 15.20 This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

Signed for and on behalf of Runbeck Election Services, Inc.

Name: *Robert B. Shepherd* | *Robert B. Shepherd*
Position: *CEO* | (Authorized Signatory)

Signed for and on behalf of NCC GROUP ESCROW ASSOCIATES, LLC

Name: Mary English | *Mary English*
Position: HOO | (Authorized Signatory)

DocuSigned by:

Mary English

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Schedule 1**NCC Group's Fees**

	DESCRIPTION	LICENSOR	LICENSEE
1	Agreement Annual Fee (payable on completion of this Agreement and in advance of each anniversary thereafter)	100%	Nil
2	Licensee Annual Fee (per Licensee per deposit account, payable on registration and in advance of each anniversary thereafter)	100%	Nil
3	Virtual Machine Fee (per deposit). If ordered in advance the Virtual Machine Deposit must be received within a year of order, otherwise a new fee will be payable.	Requesting party	Requesting party
4	Licensee Termination Fee (plus NCC Group's reasonable expenses)	Nil	100%
5	Licensor Termination Fee (plus NCC Group's reasonable expenses)	100%	Nil

Additional fees will be payable to NCC Group by the Licensor (unless otherwise agreed between the parties) for the following where applicable:

- Storage Fee for deposits in excess of 1 cubic foot (physical deposits) or uploads of more than 100 GB content size (electronic deposits);
- Any variation, assignment or replacement of this Agreement;
- Media Check Fee for deposits consisting of more than 5 physical media items or 100 GB content size; and/or
- Media Check Fee for Media Checks which cannot be completed within NCC Group's reasonable timescale, for example due to the receipt of physical deposits on hardware other than CD/DVD/Blu Ray/USB Hard Drive or the requirement for non-specific applications or software or niche and non-mainstream skillsets to complete the test.

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Appendix 1**Template Deposit Account Agreement****Agreement dated:****Between:**

- (1) Runbeck Election Services, Inc., an Arizona corporation whose principal place of business is at 2800 S. 36th Street, Phoenix, AZ 85034 ("Licensor"); and
- (2) NCC Group Escrow Associates, LLC, a limited liability company organized and existing under the laws of Georgia with its principal office at 11605 Haynes Bridge Road, 400 Northwinds, Suite 550, Alpharetta, GA 30009 USA ("NCC Group").

Agreement:

In consideration of the mutual obligations and undertakings contained in the multi licensee deposit account software escrow agreement number 70865 dated _____ ("Agreement") between the Licensor and NCC Group, the parties to this agreement agree as follows:

- 1 This agreement is a Deposit Account Agreement (as defined in the Agreement).
- 2 This Deposit Account Agreement is supplemental to and governed by the terms and conditions of the Agreement.
- 3 This Deposit Account Agreement relates to the Escrow Material as defined in the Agreement and as described in Schedule 1 below.
- 4 NCC Group's fees are payable as set out in the Order Form.

Signed for and on behalf of Runbeck Election Services, Inc.

Name:
Position: (Authorized Signatory)
Date:

Signed for and on behalf of NCC GROUP ESCROW ASSOCIATES, LLC

Name:
Position: (Authorized Signatory)
Date:

Schedule 1**Description of Escrow Material**

Product name

Product description

Deposit Account No. [1]

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Appendix 2**Registration Agreement**

NOTE: A COPY OF THIS REGISTRATION AGREEMENT MUST BE DULY SIGNED BY AN AUTHORIZED SIGNATORY AND RETURNED TO NCC GROUP BEFORE A REGISTERED LICENSEE CAN CLAIM PROTECTION UNDER THE RELEVANT DEPOSIT ACCOUNT.

Agreement between:

- (1) Runbeck Election Services, Inc., an Arizona corporation whose principal place of business is at 2800 S. 36th Street, Phoenix, AZ 85034 ("Licensor");
- (2) NCC Group Escrow Associates, LLC, a limited liability company organized and existing under the laws of Georgia with its principal office at 11605 Haynes Bridge Road, 400 Northwinds, Suite 550, Alpharetta, GA 30009 USA ("NCC Group"); and
- (3) Licensee's Name: _____
whose principal office is at _____

("Licensee");

Agreement:

1. This registration agreement ("**Registration Agreement**") is supplemental to the terms and conditions of the multi licensee deposit account software escrow agreement number 70865 dated _____ ("**Escrow Agreement**") and the Deposit Account Agreement(s) (as defined in the Escrow Agreement) product name(s) and number(s) _____ dated _____, both between the Licensor and NCC Group.
2. This Registration Agreement, the Escrow Agreement and the relevant Deposit Account Agreement(s) together shall form a binding agreement between the Licensor, NCC Group and the Licensee in accordance with the terms of the Escrow Agreement.
3. The Licensee hereby agrees to take the benefit of, agrees and undertakes to perform its obligations under and be bound by the terms and conditions of the Escrow Agreement as though they were a party to the Escrow Agreement and the Deposit Account Agreement and named therein as a Licensee.
4. This Registration Agreement shall take effect when NCC Group has:
 - (i) received written approval from the Licensor of the Licensee's application to join the Escrow Agreement;
 - (ii) acknowledged in writing to the Licensee that it has received a copy of this Registration Agreement completed and duly executed; and
 - (iii) registered the Licensee as a party to the Escrow Agreement.

Signed for and on behalf of [Licensee]

Name: _____

Position: _____ (Authorized Signatory)

Date: _____

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Appendix 3**Standard Licensee List**

NOTE: A COPY OF THIS STANDARD LICENSEE LIST MUST INCLUDE THE LICENSOR NAME, THE NAME OF THE PERSON AT THE LICENSOR SUBMITTING THE LIST AND THE DATE SUBMITTED TO NCC GROUP AND MUST BE RETURNED TO THE NCC GROUP BEFORE A STANDARD LICENSEE CAN CLAIM PROTECTION UNDER THE RELEVANT DEPOSIT ACCOUNT.

Licensor Name: Runbeck Election Services, Inc.

Form submitted by:

Date submitted:

Product name:**Deposit Account Number: [1]****Standard Licensee #1**

Company Name:

Contact:

Address:

City, State, Zip:

Telephone: Fax:

E-mail:

Deposit Account Number(s):

Standard Licensee #2

Company Name:

Contact:

Address:

City, State, Zip:

Telephone: Fax:

E-mail:

Deposit Account Number(s):

Product name:**Deposit Account Number: [2]****Standard Licensee #1**

Company Name:

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Contact: _____

Address: _____

City, State, Zip: _____

Telephone: _____ Fax: _____

E-mail: _____

Deposit Account Number(s): _____

Standard Licensee #2

Company Name: _____

Contact: _____

Address: _____

City, State, Zip: _____

Telephone: _____ Fax: _____

E-mail: _____

Deposit Account Number(s): _____

APPENDIX J1
Intellectual Property Developed-Designed by Contractor

INTENTIONALLY OMITTED

EXHIBIT J2
Contractor's Assignment and transfer of Copyright

INTENTIONALLY OMITTED

EXHIBIT J3
Notary Statement for Assignment and Transfer of Copyright

INTENTIONALLY OMITTED

APPENDIX K – Information Security and Privacy Requirements

INFORMATION SECURITY AND PRIVACY REQUIREMENTS EXHIBIT

The County of Los Angeles (“County”) is committed to safeguarding the Integrity of the County systems, Data, Information and protecting the privacy rights of the individuals that it serves. This Information Security and Privacy Requirements Exhibit (“Exhibit”) sets forth the County and the Contractor’s commitment and agreement to fulfill each of their obligations under applicable state or federal laws, rules, or regulations, as well as applicable industry standards concerning privacy, Data protections, Information Security, Confidentiality, Availability, and Integrity of such Information. The Information Security and privacy requirements and procedures in this Exhibit are to be established by the Contractor before the Effective Date of the Contract and maintained throughout the term of the Contract.

These requirements and procedures are a minimum standard and are in addition to the requirements of the underlying base agreement between the County and Contractor (the “Contract”) and any other agreements between the parties. However, it is the Contractor's sole obligation to: (i) implement appropriate and reasonable measures to secure and protect its systems and all County Information against internal and external Threats and Risks; and (ii) continuously review and revise those measures to address ongoing Threats and Risks. Failure to comply with the minimum requirements and procedures set forth in this Exhibit will constitute a material, non-curable breach of Contract by the Contractor, entitling the County, in addition to the cumulative of all other remedies available to it at law, in equity, or under the Contract, to immediately terminate the Contract. To the extent there are conflicts between this Exhibit and the Contract, this Exhibit shall prevail unless stated otherwise.

1. DEFINITIONS

Unless otherwise defined in the Contract, the definitions herein contained are specific to the uses within this exhibit.

- a. **Availability:** the condition of Information being accessible and usable upon demand by an authorized entity (Workforce Member or process).
- b. **Confidentiality:** the condition that Information is not disclosed to system entities (users, processes, devices) unless they have been authorized to access the Information.
- c. **County Information:** all Data and Information belonging to the County.
- d. **Data:** a subset of Information comprised of qualitative or quantitative values.
- e. **Incident:** a suspected, attempted, successful, or imminent Threat of unauthorized electronic and/or physical access, use, disclosure, breach, modification, or destruction of information; interference with Information Technology operations; or significant violation of County policy.

APPENDIX K – Information Security and Privacy Requirements

- f. **Information:** any communication or representation of knowledge or understanding such as facts, Data, or opinions in any medium or form, including electronic, textual, numerical, graphic, cartographic, narrative, or audiovisual.
- g. **Information Security Policy:** high level statements of intention and direction of an organization used to create an organization's Information Security Program as formally expressed by its top management.
- h. **Information Security Program:** formalized and implemented Information Security Policies, standards and procedures that are documented describing the program management safeguards and common controls in place or those planned for meeting the County's information security requirements.
- i. **Information Technology:** any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of Data or Information.
- j. **Integrity:** the condition whereby Data or Information has not been improperly modified or destroyed and authenticity of the Data or Information can be ensured.
- k. **Mobile Device Management (MDM):** software that allows Information Technology administrators to control, secure, and enforce policies on smartphones, tablets, and other endpoints.
- l. **Privacy Policy:** high level statements of intention and direction of an organization used to create an organization's Privacy Program as formally expressed by its top management.
- m. **Privacy Program:** A formal document that provides an overview of an organization's privacy program, including a description of the structure of the privacy program, the resources dedicated to the privacy program, the role of the organization's privacy official and other staff, the strategic goals and objectives of the Privacy Program, and the program management controls and common controls in place or planned for meeting applicable privacy requirements and managing privacy risks.
- n. **Risk:** a measure of the extent to which the County is threatened by a potential circumstance or event, Risk is typically a function of: (i) the adverse impacts that would arise if the circumstance or event occurs; and (ii) the likelihood of occurrence.
- o. **Threat:** any circumstance or event with the potential to adversely impact County operations (including mission, functions, image, or reputation), organizational assets, individuals, or other organizations through an Information System via unauthorized access, destruction, disclosure, modification of Information, and/or denial of service.
- p. **Vulnerability:** a weakness in a system, application, network or process that is subject to exploitation or misuse.
- q. **Workforce Member:** employees, volunteers, and other persons whose conduct, in the performance of work for Los Angeles County, is under the direct control of Los

APPENDIX K – Information Security and Privacy Requirements

Angeles County, whether or not they are paid by Los Angeles County. This includes, but may not be limited to, full and part time elected or appointed officials, employees, affiliates, associates, students, volunteers, and staff from third party entities who provide service to the County.

2. INFORMATION SECURITY AND PRIVACY PROGRAMS

- a. **Information Security Program.** The Contractor shall maintain a company-wide Information Security Program designed to evaluate Risks to the Confidentiality, Availability, and Integrity of the County Information covered under this Contract.

Contractor's Information Security Program shall include the creation and maintenance of Information Security Policies, standards, and procedures. Information Security Policies, standards, and procedures will be communicated to all Contractor employees in a relevant, accessible, and understandable form and will be regularly reviewed and evaluated to ensure operational effectiveness, compliance with all applicable laws and regulations, and addresses new and emerging Threats and Risks.

The Contractor shall exercise the same degree of care in safeguarding and protecting County Information that the Contractor exercises with respect to its own Information and Data, but in no event less than a reasonable degree of care. The Contractor will implement, maintain, and use appropriate administrative, technical, and physical security measures to preserve the Confidentiality, Integrity, and Availability of County Information.

The Contractor's Information Security Program shall:

- Protect the Confidentiality, Integrity, and Availability of County Information in the Contractor's possession or control;
- Protect against any anticipated Threats or hazards to the Confidentiality, Integrity, and Availability of County Information;
- Protect against unauthorized or unlawful access, use, disclosure, alteration, or destruction of County Information;
- Protect against accidental loss or destruction of, or damage to, County Information; and
- Safeguard County Information in compliance with any applicable laws and regulations which apply to the Contractor.

- b. **Privacy Program.** The Contractor shall establish and maintain a company-wide Privacy Program designed to incorporate Privacy Policies and practices in its business operations to provide safeguards for Information, including County Information. The Contractor's Privacy Program shall include the development of, and ongoing reviews and updates to Privacy Policies, guidelines, procedures and appropriate workforce privacy training within its organization. These Privacy Policies, guidelines, procedures, and appropriate training will be provided to all Contractor employees, agents, and volunteers. The Contractor's Privacy Policies, guidelines, and procedures shall be continuously reviewed and updated for

APPENDIX K – Information Security and Privacy Requirements

effectiveness and compliance with applicable laws and regulations, and to appropriately respond to new and emerging Threats and Risks. The Contractor's Privacy Program shall perform ongoing monitoring and audits of operations to identify and mitigate privacy Threats.

The Contractor shall exercise the same degree of care in safeguarding the privacy of County Information that the Contractor exercises with respect to its own Information, but in no event less than a reasonable degree of care. The Contractor will implement, maintain, and use appropriate privacy practices and protocols to preserve the Confidentiality of County Information.

The Contractor's Privacy Program shall include:

- A Privacy Program framework that identifies and ensures that the Contractor complies with all applicable laws and regulations;
- External Privacy Policies, and internal privacy policies, procedures and controls to support the privacy program;
- Protections against unauthorized or unlawful access, use, disclosure, alteration, or destruction of County Information;
- A training program that covers Privacy Policies, protocols and awareness;
- A response plan to address privacy Incidents and privacy breaches; and
- Ongoing privacy assessments and audits.

3. CONTRACTOR'S USE OF COUNTY INFORMATION

The Contractor may use County Information only as necessary to carry out its obligations under this Contract. The Contractor shall collect, maintain, or use County Information only for the purposes specified in the Contract and, in all cases, in compliance with all applicable local, state, and federal laws and regulations governing the collection, maintenance, transmission, dissemination, storage, use, and destruction of County Information, including, but not limited to, (i) any state and federal law governing the protection of personal Information, (ii) any state and federal security breach notification laws, and (iii) the rules, regulations and directives of the Federal Trade Commission, as amended from time to time.

4. SHARING COUNTY INFORMATION AND DATA

The Contractor shall not share, release, disclose, disseminate, make available, transfer, or otherwise communicate orally, in writing, or by electronic or other means, County Information to a third party for monetary or other valuable consideration.

5. CONFIDENTIALITY

- a. **Confidentiality of County Information.** The Contractor agrees that all County Information is Confidential and proprietary to the County regardless of whether such Information was disclosed intentionally or unintentionally or marked as "confidential".

APPENDIX K – Information Security and Privacy Requirements

- b. **Disclosure of County Information.** The Contractor may disclose County Information only as necessary to carry out its obligations under this Contract, or as required by law, and is prohibited from using County Information for any other purpose without the prior express written approval of the County's contract administrator in consultation with the County's Chief Information Security Officer and/or Chief Privacy Officer. If required by a court of competent jurisdiction or an administrative body to disclose County Information, the Contractor shall notify the County's contract administrator immediately and prior to any such disclosure, to provide the County an opportunity to oppose or otherwise respond to such disclosure, unless prohibited by law from doing so.
- c. **Disclosure Restrictions of Non-Public Information.** While performing work under the Contract, the Contractor may encounter County Non-public Information ("NPI") in the course of performing this Contract, including, but not limited to, licensed technology, drawings, schematics, manuals, sealed court records, and other materials described and/or identified as "Internal Use", "Confidential" or "Restricted" as defined in [Board of Supervisors Policy 6.104 – Information Classification Policy](#) as NPI. The Contractor shall not disclose or publish any County NPI and material received or used in performance of this Contract. This obligation is perpetual.
- d. **Individual Requests.** The Contractor shall acknowledge any request or instructions from the County regarding the exercise of any individual's privacy rights provided under applicable federal or state laws. The Contractor shall have in place appropriate policies and procedures to promptly respond to such requests and comply with any request or instructions from the County within seven (7) calendar days. If an individual makes a request directly to the Contractor involving County Information, the Contractor shall notify the County within five (5) calendar days and the County will coordinate an appropriate response, which may include instructing the Contractor to assist in fulfilling the request. Similarly, if the Contractor receives a privacy or security complaint from an individual regarding County Information, the Contractor shall notify the County as described in Section 13 SECURITY AND PRIVACY INCIDENTS, and the County will coordinate an appropriate response.
- e. **Retention of County Information.** The Contractor shall not retain any County Information for any period longer than necessary for the Contractor to fulfill its obligations under the Contract and applicable law, whichever is longest.

6. CONTRACTOR EMPLOYEES

The Contractor shall require all employees, agents, and volunteers to abide by the requirements in this Exhibit, as set forth in the Contract, and sign an appropriate written Confidentiality/non-disclosure agreement with the Contractor.

The Contractor shall supply each of its employees with appropriate, annual training regarding Information Security procedures, Risks, and Threats. The Contractor agrees that training will cover, but may not be limited to the following topics:

APPENDIX K – Information Security and Privacy Requirements

- a) **Secure Authentication:** The importance of utilizing secure authentication, including proper management of authentication credentials (login name and password) and multi-factor authentication.
- b) **Social Engineering Attacks:** Identifying different forms of social engineering including, but not limited to, phishing, phone scams, and impersonation calls.
- c) **Handling of County Information:** The proper identification, storage, transfer, archiving, and destruction of County Information.
- d) **Causes of Unintentional Information Exposure:** Provide awareness of causes of unintentional exposure of Information such as lost mobile devices, emailing Information to inappropriate recipients, etc.
- e) **Identifying and Reporting Incidents:** Awareness of the most common indicators of an Incident and how such indicators should be reported within the organization.
- f) **Privacy:** The Contractor's Privacy Policies and procedures as described in Section 2b. Privacy Program.

The Contractor shall have an established set of procedures to ensure the Contractor's employees promptly report actual and/or suspected breaches of security.

7. SUBCONTRACTORS AND THIRD PARTIES

The County acknowledges that in the course of performing its services, the Contractor may desire or require the use of goods, services, and/or assistance of Subcontractors or other third parties or suppliers. The terms of this Exhibit shall also apply to all Subcontractors and third parties. The Contractor or third party shall be subject to the following terms and conditions: (i) each Subcontractor and third party must agree in writing to comply with and be bound by the applicable terms and conditions of this Exhibit, both for itself and to enable the Contractor to be and remain in compliance with its obligations hereunder, including those provisions relating to Confidentiality, Integrity, Availability, disclosures, security, and such other terms and conditions as may be reasonably necessary to effectuate the Contract including this Exhibit; and (ii) the Contractor shall be and remain fully liable for the acts and omissions of each Subcontractor and third party, and fully responsible for the due and proper performance of all Contractor obligations under this Contract.

The Contractor shall obtain advanced approval from the County's Chief Information Security Officer and/or Chief Privacy Officer prior to subcontracting services subject to this Exhibit.

8. STORAGE AND TRANSMISSION OF COUNTY INFORMATION

All County Information shall be rendered unusable, unreadable, or indecipherable to unauthorized individuals. Without limiting the generality of the foregoing, the Contractor will encrypt all workstations, portable devices (such as mobile, wearables, tablets,) and removable media (such as portable or removable hard disks, floppy disks, USB memory drives, CDs, DVDs, magnetic tape, and all other removable storage media) that store County Information in accordance with Federal Information

APPENDIX K – Information Security and Privacy Requirements

Processing Standard (FIPS) 140-2 or otherwise approved by the County's Chief Information Security Officer.

The Contractor will encrypt County Information transmitted on networks outside of the Contractor's control with Transport Layer Security (TLS) or Internet Protocol Security (IPSec), at a minimum cipher strength of 128 bit or an equivalent secure transmission protocol or method approved by County's Chief Information Security Officer.

In addition, the Contractor shall not store County Information in the cloud or in any other online storage provider without written authorization from the County's Chief Information Security Officer. All mobile devices storing County Information shall be managed by a Mobile Device Management system. Such system must provide provisions to enforce a password/passcode on enrolled mobile devices. All workstations/Personal Computers (including laptops, 2-in-1s, and tablets) will maintain the latest operating system security patches, and the latest virus definitions. Virus scans must be performed at least monthly. Request for less frequent scanning must be approved in writing by the County's Chief Information Security Officer.

9. RETURN OR DESTRUCTION OF COUNTY INFORMATION

The Contractor shall return or destroy County Information in the manner prescribed in this section unless the Contract prescribes procedures for returning or destroying County Information and those procedures are no less stringent than the procedures described in this section.

- a. **Return or Destruction.** Upon County's written request, or upon expiration or termination of this Contract for any reason, Contractor shall (i) promptly return or destroy, at the County's option, all originals and copies of all documents and materials it has received containing County Information; or (ii) if return or destruction is not permissible under applicable law, continue to protect such Information in accordance with the terms of this Contract; and (iii) deliver or destroy, at the County's option, all originals and copies of all summaries, records, descriptions, modifications, negatives, drawings, adoptions and other documents or materials, whether in writing or in machine-readable form, prepared by the Contractor, prepared under its direction, or at its request, from the documents and materials referred to in Subsection (i) of this Section. For all documents or materials referred to in Subsections (i) and (ii) of this Section that the County requests be returned to the County, the Contractor shall provide a written attestation on company letterhead certifying that all documents and materials have been delivered to the County. For documents or materials referred to in Subsections (i) and (ii) of this Section that the County requests be destroyed, the Contractor shall provide an attestation on company letterhead and certified documentation from a media destruction firm consistent with subdivision b of this Section. Upon termination or expiration of the Contract or at any time upon the County's request, the Contractor shall return all hardware, if any, provided by the County to the Contractor. The hardware should be physically sealed and returned via a bonded courier, or as otherwise directed by the County.
- b. **Method of Destruction.** The Contractor shall destroy all originals and copies by (i) cross-cut shredding paper, film, or other hard copy media so that the Information

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cannot be read or otherwise reconstructed; and (ii) purging, or destroying electronic media containing County Information consistent with NIST Special Publication 800-88, "Guidelines for Media Sanitization" such that the County Information cannot be retrieved. The Contractor will provide an attestation on company letterhead and certified documentation from a media destruction firm, detailing the destruction method used and the County Information involved, the date of destruction, and the company or individual who performed the destruction. Such statement will be sent to the designated County contract manager within ten (10) days of termination or expiration of the Contract or at any time upon the County's request. On termination or expiration of this Contract, the County will return or destroy all Contractor's Information marked as confidential (excluding items licensed to the County hereunder, or that provided to the County by the Contractor hereunder), at the County's option.

10. PHYSICAL AND ENVIRONMENTAL SECURITY

All Contractor facilities that process County Information will be located in secure areas and protected by perimeter security such as barrier access controls (e.g., the use of guards and entry badges) that provide a physically secure environment from unauthorized access, damage, and interference.

All Contractor facilities that process County Information will be maintained with physical and environmental controls (temperature and humidity) that meet or exceed hardware manufacturer's specifications.

11. OPERATIONAL MANAGEMENT, BUSINESS CONTINUITY, AND DISASTER RECOVERY

The Contractor shall: (i) monitor and manage all of its Information processing facilities, including, without limitation, implementing operational procedures, change management, and Incident response procedures consistent with Section 13 SECURITY AND PRIVACY INCIDENTS; and (ii) deploy adequate anti-malware software and adequate back-up systems to ensure essential business Information can be promptly recovered in the event of a disaster or media failure; and (iii) ensure its operating procedures are adequately documented and designed to protect Information and computer media from theft and unauthorized access.

The Contractor must have business continuity and disaster recovery plans. These plans must include a geographically separate back-up data center and a formal framework by which an unplanned event will be managed to minimize the loss of County Information and services. The formal framework includes a defined back-up policy and associated procedures, including documented policies and procedures designed to: (i) perform back-up of data to a remote back-up data center in a scheduled and timely manner; (ii) provide effective controls to safeguard backed-up data; (iii) securely transfer County Information to and from back-up location; (iv) fully restore applications and operating systems; and (v) demonstrate periodic testing of restoration from back-up location. If the Contractor makes backups to removable media (as described in Section 8 STORAGE AND TRANSMISSION OF COUNTY INFORMATION), all such backups shall be encrypted in compliance with the

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encryption requirements noted above in Section 8 STORAGE AND TRANSMISSION OF COUNTY INFORMATION.

12. ACCESS CONTROL

Subject to and without limiting the requirements under Section 8 STORAGE AND TRANSMISSION OF COUNTY INFORMATION, County Information (i) may only be made available and accessible to those parties explicitly authorized under the Contract or otherwise expressly approved by the County Project Director or Project Manager in writing; and (ii) if transferred using removable media (as described in Section 8 STORAGE AND TRANSMISSION OF COUNTY INFORMATION) must be sent via a bonded courier and protected using encryption technology designated by the Contractor and approved by the County's Chief Information Security Officer in writing. The foregoing requirements shall apply to back-up media stored by the Contractor at off-site facilities.

The Contractor shall implement formal procedures to control access to County systems, services, and/or Information, including, but not limited to, user account management procedures and the following controls:

- a. Network access to both internal and external networked services shall be controlled, including, but not limited to, the use of industry standard and properly configured firewalls;
- b. Operating systems will be used to enforce access controls to computer resources including, but not limited to, multi-factor authentication, use of virtual private networks (VPN), authorization, and event logging;
- c. The Contractor will conduct regular, no less often than semi-annually, user access reviews to ensure that unnecessary and/or unused access to County Information is removed in a timely manner;
- d. Applications will include access control to limit user access to County Information and application system functions;
- e. All systems will be monitored to detect deviation from access control policies and identify suspicious activity. The Contractor shall record, review and act upon all events in accordance with Incident response policies set forth in Section 13 SECURITY AND PRIVACY INCIDENTS; and
- f. In the event any hardware, storage media, or removable media (as described in Section 8 STORAGE AND TRANSMISSION OF COUNTY INFORMATION) must be disposed of or sent off-site for servicing, the Contractor shall ensure all County Information, has been eradicated from such hardware and/or media using industry best practices as discussed in Section 8 STORAGE AND TRANSMISSION OF COUNTY INFORMATION.

13. SECURITY AND PRIVACY INCIDENTS

In the event of a Security or Privacy Incident, the Contractor shall:

- a. Promptly notify the County's Chief Information Security Officer, the Departmental Information Security Officer, and the County's Chief Privacy Officer of any Incidents

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involving County Information, within twenty-four (24) hours of detection of the Incident. All notifications shall be submitted via encrypted email and telephone.

County Chief Information Security Officer and Chief Privacy Officer email

CISO-CPO_Notify@lacounty.gov

Chief Information Security Officer:

Ralph Johnson
Chief Information Security Officer
320 W Temple, 7th Floor
Los Angeles, CA 90012
(213) 253-5600

Chief Privacy Officer:

Lillian Russell
Chief Privacy Officer
320 W Temple, 7th Floor
Los Angeles, CA 90012
(213) 351-5363

Departmental Information Security Officer:

Daniel Temisanren, MSc Comp Sci, CISM
Departmental Information Security & Privacy Officer
Registrar Recorder County Clerk
12400 Imperial Hwy
Norwalk, CA 90650
Office (562) 462-2445
Cell (562) 233-3490
dtemisanren@rrcc.lacounty.gov

- b. Include the following Information in all notices:
 - i. The date and time of discovery of the Incident,
 - ii. The approximate date and time of the Incident,
 - iii. A description of the type of County Information involved in the reported Incident, and
 - iv. A summary of the relevant facts, including a description of measures being taken to respond to and remediate the Incident, and any planned corrective actions as they are identified.
 - v. The name and contact information for the organizations official representative(s), with relevant business and technical information relating to the incident.
- c. Cooperate with the County to investigate the Incident and seek to identify the specific County Information involved in the Incident upon the County's written request, without charge, unless the Incident was caused by the acts or omissions of the County. As Information about the Incident is collected or otherwise becomes available to the Contractor, and unless prohibited by law, the Contractor shall

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provide Information regarding the nature and consequences of the Incident that are reasonably requested by the County to allow the County to notify affected individuals, government agencies, and/or credit bureaus.

- d. Immediately initiate the appropriate portions of their Business Continuity and/or Disaster Recovery plans in the event of an Incident causing an interference with Information Technology operations.
- e. Assist and cooperate with forensic investigators, the County, law firms, and and/or law enforcement agencies at the direction of the County to help determine the nature, extent, and source of any Incident, and reasonably assist and cooperate with the County on any additional disclosures that the County is required to make as a result of the Incident.
- f. Allow the County or its third-party designee at the County's election to perform audits and tests of the Contractor's environment that may include, but are not limited to, interviews of relevant employees, review of documentation, or technical inspection of systems, as they relate to the receipt, maintenance, use, retention, and authorized destruction of County Information.

Notwithstanding any other provisions in this Contract and Exhibit, The Contractor shall be (i) liable for all damages and fines, (ii) responsible for all corrective action, and (iii) responsible for all notifications arising from an Incident involving County Information caused by the Contractor's weaknesses, negligence, errors, or lack of Information Security or privacy controls or provisions.

14. NON-EXCLUSIVE EQUITABLE REMEDY

The Contractor acknowledges and agrees that due to the unique nature of County Information there may be no adequate remedy at law for any breach of its obligations hereunder, that any such breach may result in irreparable harm to the County, and therefore, that upon any such breach, the County will be entitled to appropriate equitable remedies, and may seek injunctive relief from a court of competent jurisdiction without the necessity of proving actual loss, in addition to whatever remedies are available within law or equity. Any breach of Section 5 CONFIDENTIALITY shall constitute a material breach of this Contract and be grounds for immediate termination of this Contract in the exclusive discretion of the County.

15. AUDIT AND INSPECTION

- a. **Self-Audits.** The Contractor shall periodically conduct audits, assessments, testing of the system of controls, and testing of Information Security and privacy procedures, including penetration testing, intrusion detection, and firewall configuration reviews. These periodic audits will be conducted by staff certified to perform the specific audit in question at Contractor's sole cost and expense through either (i) an internal independent audit function, (ii) a nationally recognized, external, independent auditor, or (iii) another independent auditor approved by the County.

The Contractor shall have a process for correcting control deficiencies that have been identified in the periodic audit, including follow up documentation providing

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evidence of such corrections. The Contractor shall provide the audit results and any corrective action documentation to the County promptly upon its completion at the County's request. With respect to any other report, certification, or audit or test results prepared or received by the Contractor that contains any County Information, the Contractor shall promptly provide the County with copies of the same upon the County's reasonable request, including identification of any failure or exception in the Contractor's Information systems, products, and services, and the corresponding steps taken by the Contractor to mitigate such failure or exception. Any reports and related materials provided to the County pursuant to this Section shall be provided at no additional charge to the County.

- b. **County Requested Audits.** At its own expense, the County, or an independent third-party auditor commissioned by the County, shall have the right to audit the Contractor's infrastructure, security and privacy practices, Data center, services and/or systems storing or processing County Information via an onsite inspection at least once a year. Upon the County's request the Contractor shall complete a questionnaire regarding Contractor's Information Security and/or program. The County shall pay for the County requested audit unless the auditor finds that the Contractor has materially breached this Exhibit, in which case the Contractor shall bear all costs of the audit; and if the audit reveals material non-compliance with this Exhibit, the County may exercise its termination rights underneath the Contract.

Such audit shall be conducted during the Contractor's normal business hours with reasonable advance notice, in a manner that does not materially disrupt or otherwise unreasonably and adversely affect the Contractor's normal business operations. The County's request for the audit will specify the scope and areas (e.g., Administrative, Physical, and Technical) that are subject to the audit and may include, but are not limited to physical controls inspection, process reviews, policy reviews, evidence of external and internal Vulnerability scans, penetration test results, evidence of code reviews, and evidence of system configuration and audit log reviews. It is understood that the results may be filtered to remove the specific Information of other Contractor customers such as IP address, server names, etc. The Contractor shall cooperate with the County in the development of the scope and methodology for the audit, and the timing and implementation of the audit. This right of access shall extend to any regulators with oversight of the County. The Contractor agrees to comply with all reasonable recommendations that result from such inspections, tests, and audits within reasonable timeframes.

When not prohibited by regulation, the Contractor will provide to the County a summary of: (i) the results of any security audits, security reviews, or other relevant audits, conducted by the Contractor or a third party; and (ii) corrective actions or modifications, if any, the Contractor will implement in response to such audits.

SOLE SOURCE CHECKLIST

Department Name: _____

☐ New Sole Source Contract

☐ Existing Sole Source Contract Date Sole Source Contract Approved: _____

Check (✓)	JUSTIFICATION FOR SOLE SOURCE CONTRACTS Identify applicable justification and provide documentation for each checked item.
	➤ Only one bona fide source (monopoly) for the service exists; performance and price competition are not available. A monopoly is an <i>“Exclusive control of the supply of any service in a given market. If more than one source in a given market exists, a monopoly does not exist.”</i>
	➤ Compliance with applicable statutory and/or regulatory provisions.
	➤ Compliance with State and/or federal programmatic requirements.
	➤ Services provided by other public or County-related entities.
	➤ Services are needed to address an emergent or related time-sensitive need.
	➤ The service provider(s) is required under the provisions of a grant or regulatory requirement.
	➤ Additional services are needed to complete an ongoing task and it would be prohibitively costly in time and money to seek a new service provider.
	➤ Services are needed during the time period required to complete a solicitation for replacement services; provided services are needed for no more than 12 months from the expiration of an existing contract which has no available option periods.
	➤ Maintenance and support services are needed for an existing solution/system during the time to complete a solicitation for a new replacement solution/ system; provided the services are needed for no more than 24 months from the expiration of an existing maintenance and support contract which has no available option periods.
	➤ Maintenance service agreements exist on equipment which must be serviced by the original equipment manufacturer or an authorized service representative.
	➤ It is more cost-effective to obtain services by exercising an option under an existing contract.
	➤ It is in the best economic interest of the County (e.g., significant costs to replace an existing system or infrastructure, administrative cost savings and excessive learning curve for a new service provider, etc.) In such cases, departments must demonstrate due diligence in qualifying the cost-savings or cost-avoidance associated with the best economic interest of the County.

Chief Executive Office

Date